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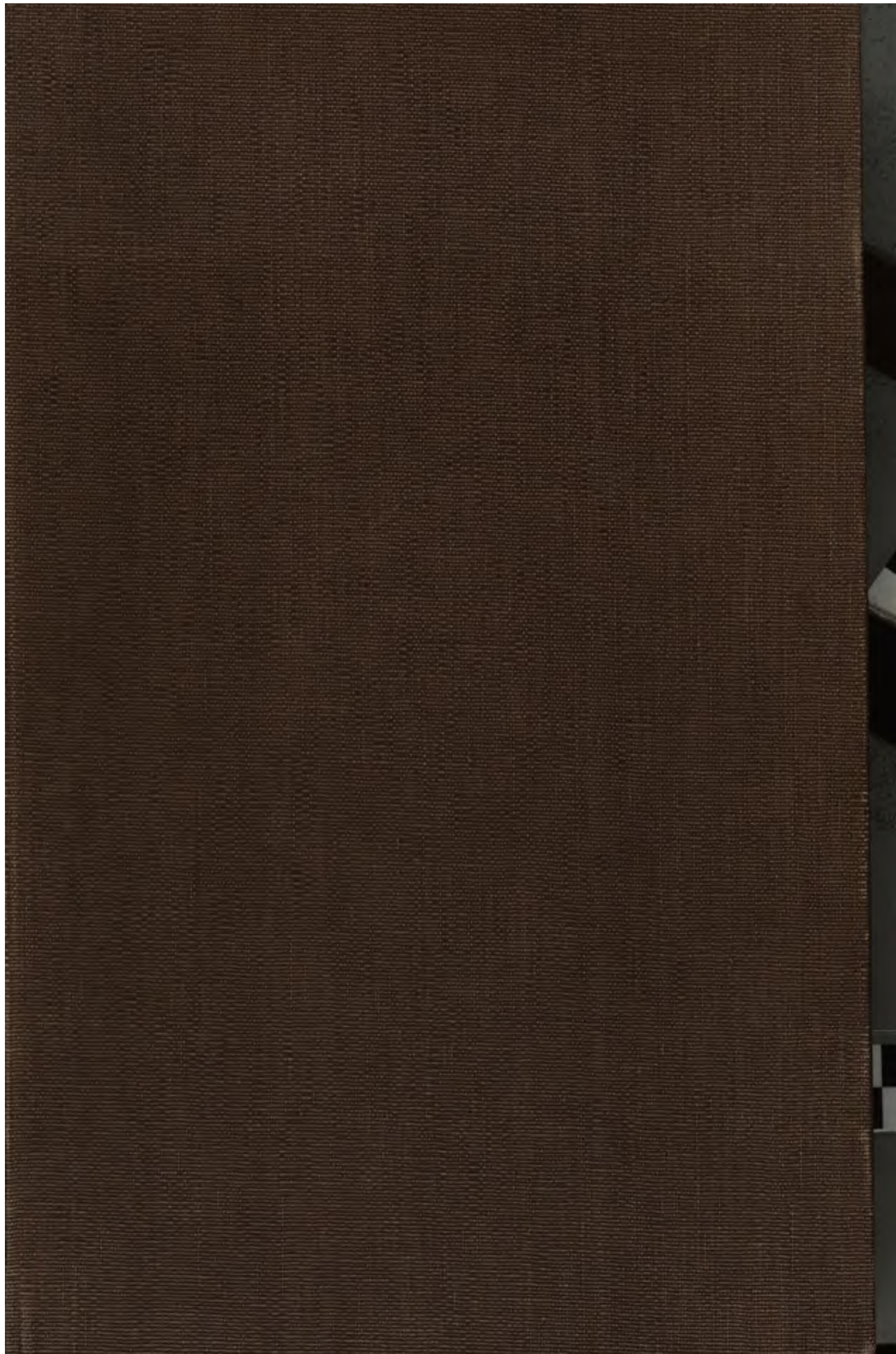
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RULES, ORDERS, and NOTICES,

I N

The Court of King's Bench,

From the Second of King *James I.* to *Hilary* Term the
15th of K. *George II.* 1741. with *Notes, Remarks and References.*

REPORTS and CASES of PRACTICE

I N

The Court of Common Pleas,

In the Reigns of

Queen ANNE, King GEORGE I. and King GEORGE II.

RULES, ORDERS, and NOTICES,

I N

The Court of Common Pleas,

From the 35th of King *HENRY VI.* to *Hilary* Term the
15th of King *GEORGE II.* 1741.

With Compleat TABLES to the Whole.

GOOKE (1)

R E P O R T S

A N D

CASES of PRACTICE

I N

The Court of Common Pleas,

In the Reigns of

Q. ANNE, K. GEORGE I. and K. GEORGE II.

By a late Eminent Hand.

With Two TABLES; one of the Names of the Cafes, the
other of the Principal Matters.

In the SAVOY:

Printed by HENRY LINTOT, (Assignee of Edward Sayer, Esq;) for
J. Stephens, at the Hand and Star in Fleetstreet; J. Worrall, at the Dove
in Bell-Tard; C. Ward and R. Chandler, at the Ship without Temple-Bar;
J. Wood, at the End of Pope's Head Alley in Cornhill; and C. Waller, in
the Middle-Temple Cloysters. M.DCC.XLII.

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R E P O R T S

A N D

C A S E S of P R A C T I C E

I N

The Court of C O M M O N P L E A S.

Copley versus Delanoy.

Easter, 5 Ann. 1706.

IN this Cause the Plaintiff having proceeded to execute a Writ of Scire facias Inquiry, without giving Notice of the Time of executing the same, a Motion was made to set aside the Execution thereof, and several Practicers having been consulted concerning the Practice in this Particular, it appeared that Notice was usually given, and yet that it had been ruled good without. But the Court thinking it reasonable that the Party should in all Cases have an Opportunity of seeing that he had Justice done him, in respect to the Measure of Damages or other Matter to be inquired of, declared that for the future Notice should always be given; and the Defendant, on paying Costs, had Leave to plead to the Writ.

Notice to be
given of Exe-
cuting a Sci?
fac' Inquiry.

*Strangeways
v. Alcoug,
post. Mich.
4 Geo. I.*

Mich. 6 Ann.

*Rawlins versus Parry, un' Attorn', &c.*

Mich. 6 Ann. 1707.

Privilege.

Midd. ff. **U**PON a Motion against the Sheriff, for not allowing a Writ of Privilege for the Discharge of the Defendant, who was taken into Custody on a King's Bench Process; a Precedent was cited of a Writ of Privilege, directed to the Justices of the King's Bench. The Court said, That that Writ might have issued sub silentio, but it was laid down as Law and Practice, that where a privileged Person is arrested on Process out of a superior Court, he may plead his Privilege (viz. he must sue out his Writ and produce it with his Plea) sub pede sigilli; but if on Process out of an inferior Court, his Writ ought to be allowed Instante.

2 Salk. 545.
Farrelley 106.
But vide post.
Higginson v.
Umsfreuil,
Tri. 2 Geo. II.

Bower versus Street.

Mich. 8 Ann. 1709.

Notice of Trial.

Regula Mic.
1654. sec. 21.

Post. Trin.
1712.

Deighton v.
Dalton, Mic.
5 Geo. I.

IN this Cause, the Practice, as to giving Notice of Trial, came in Question and was settled by the Court, viz. That the Plaintiff and Defendant should give a Term's Notice of Trial, in all Cases where the Issue has been joined above a Year; but if there have been any intermediate Proceedings, as Notice of Trial or the like, there only common Notice is necessary; vide Buxsom & Pellow post. Mich. 5 Geo. II. where the Practice was likewise settled, that where a Term's Notice is requisite, such Notice must be given before the Eoin-Day.

Smithsend versus Long.

Trin. 10 Ann. 1711. Rot. 1062.

Costs de incre-
mento in Tref-
pass.

AN Action of Trespass tried at Gloucester at the Summer Assizes, and Damages under 40 s. The Declaration suggested several Trespases, and among others, for turn-

turning up the Soil with Plows, &c. upon which the Question now was, Whether the Prothonotary should give any Increase of Costs? And Counsel being heard on both Sides, and several Precedents cited, the Court were divided in Opinion, but at last held that no Costs de incremento should be taxed. *Trin. 10 Ann.*

Post. Beck v. Nicholls, Trin. 1723.

Note; If it had appeared upon the Trial to have been a voluntary Trespass, or if the Title of the Land had come in Question, the Judge would have certified.

And in a Cause between *Hazeltine* versus *Kirkbouse*, *East. 2 Geo. II. Foley*, The same Point came again in Question, when the Court held according to the above Resolution.

Thornhill versus *Lomax*.

Borret.

Hil. 10 Ann. 1711.

ON a Motion to amend a Roll, remaining in the Treasury, whereon by Accident some Ink had fallen; the Clerk of the Treasury and Under-Clerks, and Mr. Holmes the Treasury-keeper were examined; and it appearing to be a mere Accident, the Court ordered the Roll in the Treasury to be amended by the *Nisi prius* Roll and *Postea*. *Amendment of a Roll in the Treasury by the Record and Postea.*

Anonymus.

East. 11 Ann. 1712.

IT was declared by the Court, upon a Motion, that all Notices of Trial, and of Inquiries, and Countermands of Notices, ought to be in Writing, and that all verbal Notices were void. *Notices and Countermands to be in Writing.*

Anonymus.

Easter, 11 Ann.

UPON a Motion concerning the Regularity of a Bill that had been filed against the Defendant, who was an Attorney of this Court, the Court declared that all Bills against Attornies should be thence called in *Bills against Attornies.*

East. 11 Ann. in open Court, then entered with the Prothonotary, and a Rule being given thereon by the Secondary for the Defendant's Appearance, the Bill should be filed in the Prothonotary's Office till the Rule is out, and afterwards filed with the Custos Brevium.

Trin. 21 Car. II. reg. 2. *Vide* the Rule of Court *Trin.* 1669. concerning the entering of Bills against Attornies upon Record, before they ought to be filed. See also the Rule made *Hil.* 1737. by which no Forejudger is to be entered against an Attorney in

Hil. 11 Geo. II. reg. 3. Actions in *London* or *Middlesex*, and where the Defendant resides within twenty Miles of *London*, till four Days after Notice shall be given in Writing of filing the Bill ; and in other Cases not till eight Days after such Notice.

Anonymus.

Trin. 11 Ann. 1712.

Notice of
Trial and
Inquiry.
Reg. Cur.
Mich. 1654.
sec. 21.
Ante 2.
Post. Buxton
v. Fellow,
Mich. 1731.

UPON a Motion in Relation to the due Execution of a Writ of Inquiry of Damages, the Court held, that after an Interlocutory Judgment signed, the Plaintiff need only give common Notice of the Execution of a Writ of Inquiry, notwithstanding the Judgment was signed above a Year before ; tho' upon an Issue that hath been joined above a Year, a Term's Notice of Trial must be given.

Post. Paul v. Gledbill.

Vide the Case of *Paul v. Gledbill*, *Hil.* 7 Geo. II. where it is held, that a Term's Notice must be given, as well of the Execution of Writs of Inquiry, as in all other Cases of Notices, where there has not been any Proceeding within the Year.

Anonymus.

Trin. 11 Ann.

Costs for De-
fendant after
Demurrer in
Quare Impe-
dit.

IN Quare Impedit where Judgment is given for the Defendant upon a Demurrer, the Defendant shall have Costs, per totam Curiam.

Post. Miller v. Segrave, Hil. 1723. *Aplin v. Constable, Trin.* 1727.

Trin. 11 Ann.
~~~~~

*Anonymus.*

*Trin. 11 Ann.*

**I**T was declared by the Court, that all Precipes for the Passing of Recoveries should be marked with the proper Prothonotary's Name; and at the Time of passing the same should be delivered into Court by one of the Serjeants, or otherwise no Recovery to be entered.

Precipes for Recoveries.  
*Reg. Cur' Mich. 1677.*  
*Trin. 1736.*

*Anonymus.*

*Trin. 11 Ann.*

**A**N Habeas Corpus brought by the Plaintiff, a Declaration delivered, and Judgment signed; but all was set aside as Irregular, because the Plaintiff having once made his Election cannot remove his own Cause, nor can the Defendant be compelled to appear.

*Habeas Corpus brought by the Plaintiff.*

The like Rule was made *Trin. 10 Ann. Hobbs v. Williams.*

*Anonymus.*

*Mich. 11 Ann. 1712.*

**I**N an Action against an Executor, he paid Money in to Court, upon the Common Rule; and on the Trial the Plaintiff being nonsuited, the Executor moved that he might have the Money out of Court; and granted; because he being Executor was unacquainted with the Affairs of his Testator, and might not know whether the Testator owed the Plaintiff any Money or not. But where the Defendant is neither Executor nor Administrator, altho' the Plaintiff be nonsuited, or a Verdict for the Defendant, the Plaintiff shall have the Money out of Court, because the Defendant brings it in as knowing, and being Conscious that he owes the Plaintiff so much.

Money in Court, and Plaintiff nonsuited.  
*Lane and others against Wilkinson, Trin. 13 Geo. I.*  
But vide *Ratbone v. Stedman, Trin. 2 & 3 Geo. II.*  
and *Maddox v. Paslon, East. 8 Geo. II.*  
*where the Defendant shall have the Money in Part of his Costs.*

Mich. 11 Ann.

*Anonymus.*

Mich. 11 Ann.

Copies of Entries, &c. good Evidence.  
 Post. Lock v. Hyatt, Mich. 7 Geo. I.  
 granted to produce Parish Books.  
 Knight v. Wolton, Hil. 11 Geo. I.  
 Davis v. Edwards, Hil. 5 Geo. II.

**T**HE Court was moved for a Rule upon an Officer to attend the Trial with Muster-Rolls, Books, &c. but denied by the whole Court, because such Officer is not subject to the Rule of the Court.

*Note*; Copies of Muster-Rolls, Entries of Custom-house-Officers, and all Copies from Entries where the Court has no Jurisdiction, are generally admitted as Evidence, because the Originals cannot be had.

*Methwin versus Pople.**Borret.*

Mich. 11 Ann.

Declaring by the By.

Post. Holmes v. Small, Mich. 4 Geo. II.

**I**T was held in this Cause, that the Defendant's Attorney is bound to receive Declarations by the By, after a Declaration delivered in the Action on which the Defendant was arrested, but is not bound to receive a Declaration at the Suit of any other Person.

*Seyliard versus Casburne.*

Hil. 11 Ann. 1712.

Judgment by Confession set aside because signed after Defendant's Death.  
 Rogers v. Bretton, Hil. 3 Geo. I. contra.

**J**udgment by Confession entered after the Defendant's Death, but set aside upon Motion; because the Defendant's Death was a Revocation of his Authority, and for that the Defendant could not have an Opportunity of controverting the Validity of the Warrant of Attorney to confess Judgment.

*Anonymus.*

Hil. 11 Ann.

Ejectment stayed on Payment of Rent and Costs.  
 See Stat. 11 Geo. II. cap. 19.

**M**otion was made to stay Proceedings upon an Ejectment for Non-payment of Rent reserved on a Lease; which was granted accordingly upon paying the Lessor of the Plaintiff his Rent in Arrear and Costs.

*Stores*

Hil. 11 Ann.  
~~~~~

Stores versus Tong.

Borret.

Hil. 11 Ann.

IN an Action upon the Case, the Jury upon the Trial having found Damages, but refusing to find any Costs, it was moved that Costs might be added, because the Jury are ex Officio bound to give Costs, and the Court will supply this Defect; and ordered accordingly.

Costs added upon a Postea.

Valentine v. Dennis.

Cooke.

Mich. 12 Ann. 1713.

Judgment on a Bail-Bond, but no Mention in the Declaration that it was on such a Bond; upon a Writ of Error brought the Plaintiff insisted on Bail, alledging that the Court were not to examine into the Condition of the Bond on which the Action was brought: But on the Clerk of the Error's Reporting to the Court, that the constant Practice was to examine whether the Bond was given for Payment of Money or not, and upon Examination finding it was a Bail-Bond, it was held by the whole Court that no Bail should be given on that Writ of Error.

No Bail to Writ of Error on a Bail-Bond, tho' it did not appear in the Declaration, that the Action was brought on a Bail-Bond.
Post. *Jackson v. Duckett*, Hil. 1726.

Thornby, on the Demise of the Duke and Dutchess of *Hamilton*, against *Fleetwood*.

Foley.

Hil. 12 Ann. 1713.

IN Ejectment, a Special Verdict was found on a Trial at Bar, and thereupon Judgment for the Defendant, and Costs taxed; and after Affidavit of the Demand of the Costs, a Motion was made for an Attachment against the Dutchess (the Duke being Dead) she being one of the Lessors, for Nonpayment of the Costs; and it was alledged, that if the Court did not grant it, the Defendant would be Remediless; for tho' in other Cases a Distringas

An Attachment *quoad* Goods and Chattels against a Peer-ess for Nonpayment of Costs in Ejectment.

issues

Hil. 12 Ann. issues against Peers, yet in this Case no Process can go but an Attachment.

But the Court refused to grant an Attachment against the Person of the Dutcheſs, but ordered her to ſhew Cauſe why an Attachment as to her Goods and Chattels ſhould not be iſſued, which Rule was afterwards made abſolute.

Effoin in what
Caſe allowed.

1 *Rol. Abr.*

818.

21 *Ed. IV.*

79 *b.*

Flota 382.

Booth of Real

Actions 14.

Peter v. Re-

ginner, Mich.

11 *Geo. II.*

Cooke, An

Effoin diſ-

charged be-

cauſe it was

a Perſonal

Action.

Symmonds againſt *The Mayor, &c. of Totneſs.*

Cooke.

Hil. 12 Ann.

A Motion to ſet aſide an Effoin caſt in this Cauſe; upon Debate and hearing Counſel on both Sides, the Queſtion was, Whether an Effoin lay or not? The Court was unanimouſly of Opinion, that a Corporation aggregate were not intitled to an Effoin in a Perſonal Action. And it was ſaid no Effoin lies in any Perſonal Action whatſoever, not even where a Peer or Member of Parliament is Party.

Anonymous.

Hil. 12 Ann.

An Heir ob-
liged to ap-
pear to a
Claſum fre-
git, and may
be arreſted
thereon.

A Motion to ſtay Proceedings againſt an Heir, the De-
fendant alledging, that an Heir ought to be proceeded
againſt by way of Summons, and could not be arreſted upon
a Claſum fregit; the Three Prothonotaries declared, that
formerly there was no other way of Proceeding againſt an
Heir but by Summons, &c. but of late Years the Practice
had been otherwiſe, and that an Heir might be arreſted upon
a Claſum fregit, and ſo held by the whole Court, and that
he need not be named in the Writ as Heir.

Edmonds's Caſe.

Foley.

Hil. 12 Ann.

Sheriff's Fee
for bringing
up Priſoners
by Habeas
Corpus.
Post. King's
Caſe, Hil.
1736.
Cope's Caſe,
Mich. 1734.

ONE Edmonds brought into Court by the Under-Sheriff
of Herefordſhire upon a Habeas Corpus, the Diſtance
being 130 Poſt Miles from London; by the Courſe of the
Court the Under-Sheriff could have but 6 l. 10 s. being 1 s.
per Mile; but upon his Affidavit that Edmonds was a danger-
ous Man, and that he had Notice thereof from ſeveral
Perſons who had Actions depending againſt him, and there-
fore was forced to have a Guard of four Men, the Court

on Motion ordered the Under-Sheriff to be paid 10 l. and told Edmonds that he must either pay the 10 l. or be remanded. *Hil. 12 Ann.*

Anonymus.

Hil. 12 Ann.

UPON a Motion for Leave to take out Execution upon a Judgment whereon a Writ of Error had been brought, and the Record certified, but the Writ of Error quashed; there arose a Question, Whether the Execution should be taken out of the Queen's Bench, to which Court the Record had been removed by the Writ of Error, or out of the Common Pleas, and in Order thereto, whether the Mittimus ought not to be struck out of the Roll: The Court made a Rule for the Defendant to shew Cause the first Day of the next Term, why the Mittimus should not be struck out, and afterwards the Rule was made absolute. *The Mittimus ordered to be struck out of the Roll after the Writ of Error quashed.*

Rayner versus Arnold.

Foley. Trin 1 Geo. I. 1715.

A Motion to amend a Common Judgment in Debt by Confession, in which there was a Mistake, for it was entered Attach' fuit instead of Sum' fuit; at first the Court made some Difficulty, but afterwards a Rule was made to amend the Record. *Judgment amended.*

*Bedford versus Cullen,
(Dutton and Wife Vouchees.)*

Cooke. Hil. 2 Geo. I. 1715.

MOTION to amend a Writ of Entry by putting out Cowickbury, and inserting in Paroch' de Sheering; it appeared that the Deed to lead the Uses thereof was right; *Amendment of Writ of Entry. Post. Laming v. Bestland, Trin. 5 Geo. I.*
Dean v. Coward, Trin. 10 Geo. I. and Mich. 13 Geo. I. Shepard v. Harris, Hil. 9 Geo. II. and

Hil. 2 Geo. I and upon producing several Precedents for Amendment, (among which were the following) a Rule was granted (upon great Deliberation) to amend.

Skinner versus Land, Mich. 6 Car. I. *Gulston*. A Recovery was agreed to be suffered of Lands in Alphamton and Magna Hermny, but suffered of Lands in Alphamton and Lamarsh, and ordered to be amended.

Foster & ux' versus — 9 W. III. *Cooke*. A Fine and Recovery agreed to be levied and suffered of the Manor of Inkfield, but by Mistake the same was made of the Manor of Inglefield, and ordered to be amended in all the Places both of the Fine and Recovery.

Freeman v. Montague & ux', Trin. 4 Ja. II. and *Smith v. The Earl of Dorset & al'*, Mich. 11 W. III. the like Amendment.

Tregare versus Gennings, East. 23 Car. II. *Wyrley*. A Fine levied of Tenements with the Appurtenances in T. C. in the Parish of L. in the County of C. instead of in T. C. in the Parish of St. S. near L. in the County of C. and ordered to be amended.

Abney & al' versus Longueville & al', Hil. 5 Ann. *Cooke*. A Fine and Recovery (in Hil. 35 Car. II.) of Tenements in P. in the County of Wilts, instead of — in P. Clarendon and Clarendon Park in the County of Wilts, and ordered to be amended.

Skinner & al' versus Land, Mich. 6 Car. I. *Gulston*. A Recovery suffered (in Hil. 5 Car. I.) of one Acre of Meadow in L. instead of in H. and ordered to be amended.

Cooke versus The Dutcheffs of Hamilton.

Hil. 2 Geo. I. —

IN Ejectment a Motion to amend a Warrant of Attorney, after a Writ of Error brought, and granted.

Amendment
of Warrant
of Attorney.

Post. *The Dutch India Company v. Henriques*.

Wills

Hil. 2 Geo. I.

Wills and others against Turner and others.

Hil. 2 Geo. I.

IN Prohibition a Motion was made that the Prothonotary should not allow Costs, save from the Time of the Delivery of the Declaration; and on hearing Counsel on both Sides, and reading the Act of the eighth and ninth of W. 3. the Court unanimously declared that the Plaintiff ought to have his Costs from the Time of the Suggestion and of the Suggestion it self, and all Costs incident and subsequent thereto.

Costs in Prohibition, and Construction of the Act 8 & 9 W. III. cap. 10. But vide *Battenfon v. Henchman*, Mich. 7 Geo. I.

Forward versus Bearvis.

Hil. 2 Geo. I.

IN this Cause it was held that no Admission is necessary to sue by Prochein Amy, altho' it has been usually done.

Prochein Amy.

Rogers versus Bretton.

Borret.

Hil. 3 Geo. I. 1716.

A Motion to set aside a Judgment signed after the Defendant's Death; it appeared the Defendant died before Judgment was signed, but after the first Day of the Term in which it was signed, and therefore upon hearing Counsel on both Sides the Judgment was held good, because all Judgments are such from the first Day of the Term in which they are signed.

Motion to set aside Judgment signed after Defendant's Death. But see ante 6 *Seyliard v. Casiburn*, contra.

Atterbury

Trin. 3 Geo. I.

*Atterbury and others against Pryor.*

Foley.

Trin. 3 Geo. I. 1717.

To file and
pass new
Writs of En-
try and Sei-
sin.

A Motion for Leave to pass Writs of Entry and Seisin in two Recoveries, upon Affidavit and Proof, that the Writs were received by the Custos Brevium, and deposited in the Treasury, but spoiled by the Rain getting in. Upon Sight of the Custos Brevium's Receipt, and reading the Affidavit and Exemplification and Deed to lead the Uses of the Recoveries, the Court made a Rule that the new Writs should pass the Alienation and the several Offices in this Court without Fine or Fee.

Heatley versus Pyott and his Wife.

Berret.

Trin. 3 Geo. I.

Motion to set
aside a Fine.

2 Vent. 30.
3 Lev. 36.
Hil. 36 & 37
Car. II.
Philpot v.
Philpot.
4 Co. 121,
122.

A Motion to set aside a Fine upon the Wife's Affidavit, and upon her Examination in open Court, and of the Witnesses to the Deeds, who all declared they never saw the Wife execute the Deeds, and upon Examination of one of the Commissioners upon Oath in open Court, who confessed that the Wife did not acknowledge the Fine, but alledged his Ignorance of the Law; and the other Commissioner absconding; and likewise upon Examination of the Plaintiff and several other Persons, and upon reading many Affidavits, the Court granted an Attachment against Pyott the Husband and Wood one of the Commissioners, being satisfied the Wife never acknowledged the Fine; and after much Debate they ordered the Matter to be tried upon a feigned Issue, upon which a Verdict being found that the Wife did not acknowledge the Fine, it was afterwards by Rule of Court vacated as to the Wife only.

Steward versus Harding.

Mich. 4 Geo. I. 1717.

What Time
the Plaintiff
has to declare.

A Motion to set aside a Judgment because the Declaration was not left in the Office till just before the Essoin Day of the third Term. On hearing Counsel of both Sides and

and upon Report of all the Prothonotaries, the Court were of Opinion, that notwithstanding the Rule of Court seemed to be doubtful, yet where the Defendant does not speed the Plaintiff to declare sooner by giving a Rule for that purpose at the End of the second Term, the Plaintiff shall have till the Essoin Day of the third Term to deliver of his Declaration.

*Mich. 4 Geo. I.
Regula Cur.
Mich. 1654.
sec. 14.
Hil. 9 Ann.
reg. 3.*

Cork versus Baker.

Borret.

Mich. 4 Geo. I.

A Verdict for the Plaintiff in the Court of Common Pleas, on a Declaration in Case, and a Writ of Error sued out, and thereupon a Certiorari directed to the Custos Brevium to certify an Original int' partes de pl'ito transgr'; the Custos Brevium returns no Original filed (for tho' a Common (a) Original de pl'ito Transgr' had been left in his Office by the Curfitor amongst the Originals of that Term, yet the Plaintiff had entered a Ne recipiatur before it was left) upon which the Court of King's Bench made a Rule for Mr. Yates the Deputy Custos Brevium, to attend and shew Cause why an Attachment of Contempt should not be granted against him. Mr. Yates appeared and set forth the whole Matter by Affidavits; the Court of King's Bench notwithstanding committed him to the Custody of the Marshal; after which, Application being made to this Court for a Habeas Corpus, and granted, the Court of King's Bench at the same Time made a Rule to bring him into their Court; but that Court discharged their own Rule, and the Court of Common Pleas granted a second Habeas Corpus; but on the Return Day of the second Habeas Corpus the Court of King's Bench made a Rule to carry him into their Court on a Day after the Return of the second Habeas Corpus; the Marshal brought in the Body on the second Habeas Corpus, and returned the Rule of Commitment, and the Rule made on the Return Day of the second Habeas Corpus. And Mr. Serjeant Cheshire and Pengelly appearing for Mr. Yates, and citing many Cases for his Discharge; the Court remanded him, but ordered him to be brought up on the Monday following, and deferred the Consideration of his Discharge till that Day. Afterwards the Writ of Error was non-pros'd by the Consent of the Plaintiff in Error, and Mr. Yates discharged.

The Deputy Custos Brevium committed by the Court of King's Bench, but afterwards discharged.

*Faughan 142.
12 Coke 69.
Rol. 192, 118.
Moor 138,
840.
Ro. Rep. 219.
Salk. 348.
1 Ven. 236.
1 Ro. Rep.
245.
Carter 221,
222.
Ha' Corp' Act.
16 Car. II.
cap. 10.
sec. 8.*

E

Strange-

(a) Tho' the Want of an Original after a Verdict was aided by the Stat. 18 Eliz. cap. 13. Yet an Original erroneous in Substance, or which warranted not the Declaration was not aided before the Stat. 5 Geo. I. cap. 13. whereby it is enacted, That after a Verdict, no Judgment shall be reversed for any Defect in Form or Substance in any Bill, Writ Original or Judicial, or for any Variance in such Writs from the Declaration or other Proceedings.

Mich. 4 Geo. I.

Strangeways Demandant versus Ascough, in Dower.

Cooke.

Mich. 4 Geo. I.

Notice to be
given of Exe-
cuting a Writ
of Inquiry in
Dower.

Ante Page 1.

Reg. Cur'
Mich. 1654.
ff. 21.

IN this Cause, the Question was, whether upon the Execution of a Writ of Inquiry of Damages in Dower, Notice of Executing that Inquiry should be given; and upon hearing Counsel on both Sides, the Court were of Opinion that Notice ought to be given, and, for want thereof, set aside the Writ of Inquiry; for upon any Writ of Inquiry whatsoever, it is very reasonable that the Party should have an Opportunity of defending himself in respect to the Measure of Damages.

Feild versus Walford.

No Bail-Bond
to be taken

upon an At-
tachment for
a Contempt.

13 Car. II.

sess. 2. cap. 2.

23 H. 6. c. 10.

Stamford's P.

C. 72. b.

3 Leon. 208.

Dyer 264.

Burton v.

Lane. Stiles.

Larson

v. Haddock.

2 Ventris 134.

An Attach-

ment is in the

Nature of an

Execution.

Post. Wad-

dington v.

Fitch, Easter

1734.

Borret.

Mich. 4 Geo. I.

ON a Demurrer, the Question was, whether the Sheriff can take a Bail-Bond upon an Attachment for a Contempt out of this Court. By the Act of the 13 Car. II. a Sheriff is not impowered to take Bail, though the Court or a Judge may take a Recognizance; it is true Persons taken by Virtue of Attachments out of Chancery for not appearing and answering, have been usually Bailed; and the Reason is because the Party, upon entering his Appearance and paying the usual Contempts, is discharged of Course; whereas in this Court the Party is to appear in Court de die in diem, and be examined on Interrogatories to be exhibited against him; and it is not determined that a Sheriff can take Bail upon Attachments out of Chancery, but rather doubted; and in the present Case all the Judges were of Opinion that no Bail could be taken, and gave Judgment for the Defendant.

Lamley, Ex' ux' Exec' &c. versus Nichols.

Borret.

Mich. 4 Geo. I.

Costs against
an Executor
on a Non-
pross for want
of a Repli-
cation.

IN an Action of the Case on several Promises laid in the Life-Time of the Testator for Meat, Drink, &c. the Plaintiffs were non-pross'd for want of a Replication; and now upon Motion to set aside the Judgment as to the Entry of Costs

Costs which had been taxed upon signing the Non-profs, the Question was, Whether Costs should be allowed or not? The Prothonotaries all agreed that Costs were usually taxed, and the Reason is, because the Plaintiffs themselves had been guilty of a Default; and so likewise on a Non-profs for want of a Declaration, or for want of a Replication to a Plea in Abatement; and the Court held that Costs should be allowed in this Case; but where the Plaintiff, being Executor or Administrator, is non-suited at the Assizes upon full Evidence, it was doubted whether he should pay Costs.

Mic. 4 Geo. I.
Post. Hayden
v. Norton,
Mic. 6 Geo.
II. on a Dis-
continuance.
Salk. 314.
Vide post. 77.
deon & al
Exec. v. Cooke,
Tri. 6 Geo. I.
Atkins v.
Spence, Mich.
4 Geo. II.
where this
Doubt is re-
solved.

Goodright versus Thrustout, on the Demise of Jones & ux.

Cooke. Mich. 5 Geo. I. 1718.

A Motion in Ejectment, that the Lessors should name a Plaintiff who should be liable to pay Costs, because the Lessors themselves were very poor; but denied, for the Lessors are in the Nature of Plaintiffs in any other Action, and ought to be on the same Foot as other Plaintiffs are, and therefore this Motion is constantly denied.

Motion to
name a bet-
ter Plaintiff
in Ejectment.

Deighton, on the Demise of Goakman and others,
against Dalton and others.

Cooke. Mich. 5 Geo. I.

ON a Motion for Costs for not going on to Trial, it appeared that a Countermand was given on Sunday, the Day before the Commission Day, which it was said would have been good, had it not been on a Sunday; but the Court held that Costs should be allowed.

No Notice or
Countermand
good on a
Sunday.
Reg. Cur.
Mic. 1654.
sec. 21.

Note; It has since been held that no Notice of Trial or Inquiry or Countermand of Notice shall be good on a (a) Sunday, but the Sunday intervening between the Day of Notice and the Commission Day shall be accounted as any other Day.

(a) See Stat.
29 Car. II.
cap. 7.
Plaintiff to
give two Days
Countermand
of Notice
of Trial.

And *vide* the Rule of Court made *Mic. 3 Geo. I.* by which it is ordered, that no Countermand of Trial at the Assizes shall be good, unless Notice be given two Days before the Commission Day. And *Note;* The Day of Countermand is held to be one of the Days.

Andor-

Hil. 5 Geo. I.

Anderson versus Moreton & ux.

Cooke.

Hil. 5 Geo. I. 1718.

Time of
Pleading to
Declarations
on Special
Writs left *de
bene esse*.

Vide *Reg.*
Mich. 3 Geo.
II.
Post. Sellar v.
Facoby, Hil.
1731.
Charlton v.
Hankey, Mich.
1733.
The Practice
altered.

ON Motion to set aside a Judgment signed upon a Declaration left in the Office *de bene esse* on a Special Writ in London, no Bail being put in, the Defendant insisted to have four Days to plead after the Expiration of the four Days, exclusive of the Appearance Day of the Return, allowed for putting in Bail; and for the Plaintiff it was alledged, that if he could not compel the Defendant to plead in four Days after the Delivery of the Declaration, it was to no Purpose to sue out a Special Writ, because he could not try his Cause within Term, nor would it avail him any Thing filing the Declaration *de bene esse*. The Court not finding that this Matter had ever been settled, would not make the Defendant an Example, but set aside the Judgment; and ordered that the Costs on both Sides should attend the Event of the Trial.

Hunt versus Robinson and others.

Foley.

Trin. 5 Geo. I. 1719.

Treble Costs
to a Commis-
sioner upon a
Nonfuit, by
Virtue of the
Land-Tax
Act.

AN Action was brought against a Commissioner of the Land Tax, upon which the Plaintiff was Nonfuit, and the Question was whether the Defendant should have treble Costs; the Judge had not certified; notwithstanding which, the Court made a Rule this Term for treble Costs, and directed a Special Entry on the Roll, viz. Because upon Examination in Court, it appeared that the Defendant was a Commissioner, and in the Execution of his Office as a Commissioner, pursuant to Act of Parliament.

*Laming versus Bestland,
(Jubber and others, Vouchees.)*

Trin. 5 Geo. I.

Borret.

Trin. 5 Geo. I.

A Motion to amend a Recovery in Hil. 1703. wherein West Egleston and West Tyncham was put in the Writ of Entry instead of Egleston Tyncham; the Deed to lead the Uses was right; Edward Jubber one of the Vouchees was Dead, the other Parties alive and consenting, and it appearing that it was the Intent of all the Parties that it should be right, and common Recoveries being common Assurances, Amendments ought more easily to be made than in other Cases; therefore the Court ordered it to be amended accordingly.

Recovery amended
Ante 9.
Post. *Dean & al v. Coward,*
Tri. 10 Geo. I.
& Mich. 13
6 Geo. I.
Jenkinson v.
Staples, Hil.
Geo. II.
Shepard v.
Harris, Hil.
9 Geo. II.

Husday versus Boyes.

Cooke.

Mich. 6 Geo. I. 1719.

IN this Case Bail was put in before a Judge, and accepted against, and other Bail added; the last Bail justified before a Judge without giving Notice to the Plaintiff's Attorney; the first Bail justified in Court, and the Defendant moved to strike off the Additional Bail, shewing by Affidavit, that the Additional Bail had voluntarily got himself added in the Bail-piece, on Purpose to have the Defendant in his Power, and surrender her when he thought proper. The Court ordered the Additional Bail to be struck off.

Additional Bail struck off upon justifying the Bail first put in.

Note; Dodswell versus Andrews, Mich. 6 Geo. II. Bail was changed upon the like Affidavit and Suggestion.

Buckmaster versus Troughton.

Mich. 6 Geo. I.

IN this Cause the Defendant was called upon for a Rejoinder in the Evening, and Judgment was signed the next Morning. It was moved to set aside the Judgment for want of longer Notice. The Court set aside the Judgment on Payment of Costs, because no Time was limited by Rule of the Court, but declared it should be a standing Rule for the

In what Time Judgment may be signed after calling for a Plea, &c.

Mic. 6 Geo. I.
Post. Broome
v. Woodward,
Mic. 4 Geo. II.

future, that no Judgment should be signed till the opening of the Office the next Day in the Afternoon after proper Demands are made in Writing of the Pleadings for want of which such Judgment shall be signed.

Wright versus Duxon.

Foley.

Mich. 6 Geo. I.

An Action of Debt on the Recognizance may be brought by a *Clausum fregit* *Acetiam in debito.*
Post. Covert
v. Allen, Trin.
9 Geo. I.
(a) Reg. Cur.
Mich. 1654.
sec. 12.
 Bail to be arrested four Days before the Return.
 Concerning a *Render*
vide Vandergh
v. Waylet,
Trin. 1729.
and the Case
there cited.

AN Action of Debt upon the Recognizance against Bail; the Defendant was arrested upon a *Clausum fregit* with an *Acetiam in Debito super demand'*; the Plaintiff thereupon proceeded to Judgment. And now on Motion to set aside these Proceedings, the Question was whether the Plaintiff should not have sued by special Writ; the Court held that an *Acetiam in debito* is an Action of Debt within the Meaning of the (a) Rule of Court. But that the Defendant, i. e. the Bail, must be Arrested at least four Days before the Return of the Writ or Process, so that he may have Time to render the Principal.

Note; In the Case of *Davis v. Carter & al'*, East. 4 Geo. II. *Cooke*. Pursuant to this Resolution, Proceedings against Bail were stayed because they were not served with Process till the Day of the Return.

Aplin versus Chambers.

Foley.

Mich. 6 Geo. I.

Upon Appearance to the *Exigi facias* the Defendant must plead *instante*.

IN this Cause the Question was, what Time the Defendant has to plead after Appearance to the *Exigi facias*; the Court held that he must plead *instante*. And tho' it was objected, that if the Appearance were to an *Exigi facias* returnable the last Return of any Term, the Defendant would have no Opportunity of applying to the Court to bring in Honey, change the Venue, or other Matter; but in Answer to that it was said, that the Defendant might, if he had any Reason, apply to a Judge for Relief, but that the Court would not, without manifest Reason, delay the Plaintiff after the Defendant had stood out so many Processes.

Griffin

East. 6 Geo. I.

Griffin versus Ferrers and others.

Cooke.

East. 6 Geo. I. 1720.

A Motion that Mr. Benjamin Ferrers, a Deaf and Dumb Person, might be permitted to acknowledge a Fine in open Court, upon an Examination to be taken by Signs on the Fingers, upon the Report on Oath of one Mr. Ralph Russell, who swore he had been used to converse with him in that Manner for seventeen Years and upwards, and that he understood his Meaning perfectly by those Signs: Several Pieces of Ferrers's Painting were produced in Court, viz. Pictures of Queen Anne, Lord Chantelloz Parker, and his Own, and all very like the Originals, and agreed to be well Painted and good Pieces.

Fine by a Deaf and Dumb Person.

Keep v. Bull. Trin. 7 Geo. I.

It appeared likewise he could write his own Name very well and some other Things, yet could read but little Writing, tho' he distinguished several Countries by a Map shewed him in Court, and likewise upon the Oath of Mr. George Turner, who swore he had been acquainted with Ferrers ten Years, and that he had Painted Mr. Burchet's (the Secretary of the Admiralty) Picture, for which he would not take under five Guineas, and that he believed he understood the Value of Things very well, especially Paintings; and upon great Examination in Court, by Russell the Interpreter about several Matters, to which he in all Appearance made a ready Answer by Signs to Russell; and upon reading an Order for the Dismission of a Bill in Chancery, which had been brought to prove his Incapacity to manage his Affairs; and a Decree in Chancery appointing a Partition of the Estate; and upon Ferrers's appearing to consent as well by his own Gesture as upon Russell's Oath, the Court ordered the Fine to pass, and a Special Rule was drawn up this Term for that Purpose.

Delmuida versus Bravo.

Cooke.

Trin. 6 Geo. I.

A Motion to make a Return to an Original; the Special Original was sued out, but the common Return omitted, which, Time out of Mind, has been constantly made

The Return of a Special Writ made after the Writ filed.

Trin. 6 Geo. I.

Dalton Sheriff 189.

by the Attorney of Course, but here by the Neglect of the Attorney the Return of the Original was omitted, and the Original filed without any Return at all; this Matter was several Times debated in Court, and Counsel were heard on both Sides; at Length the Court agreed that the Sheriff should, if he desired it, have Leave to make a Return, and made a Rule accordingly.

Videon & al' Executors versus Cooke, Rot. 1437.

Cooke.

Trin. 6 Geo. I.

No Costs against an Executor or Administrator, on a Nonsuit at Assizes.
Ante 14.
Post. *Atkins v. Spence, Mich. 4 Geo. II.*

IN an Action on the Case on several Promises made in the Life-Time of the Testator for Meat and Drink, the Plaintiffs were Nonsuited on a Trial at the Assizes; and now upon Motion to set aside the Costs taxed on the Nonsuit, the whole Court were of Opinion that no Costs ought to be taxed.

*Bettinson, Bart. versus Henchman & al'.
Farrington versus eisdem.*

Mich. 7 Geo. I. 1720.

What Costs on Inquiry in Prohibition.

*Fitz. Attachment 15.
3 Levinz 613.
Cro. Car. 559.
Jones 447.*

Stat. Gloucester, cap. 1.

UPON a Motion to set aside a Writ of Inquiry of Damages in Prohibition, after Judgment by Default, upon which the Jury had found Damages for the Plaintiff; so that he insisted he was intitled to Costs of the Action likewise; it was alledged on the Behalf of the Plaintiff, that the citing him to appear in the Spiritual Court in a Plea of which that Court has no Cognizance, and whereby the Plaintiff may sustain great Damages, is a Contempt of the Laws of the Land, and therefore the Defendants ought to make Satisfaction to the Plaintiff for the Damages he sustains by their Proceedings; and this the Defendants tacitly admit by suffering Judgment to go against them by Default, and therefore the Plaintiff, by the Common Law, is intitled to a Writ to inquire of his Damages, and of Consequence by the Statute of Gloucester to his Costs; of which Opinion the Court inclined to be, but took further Time to consider of the Matter: Afterwards on hearing Counsel on both Sides, and on great Debate, the Plaintiff had Liberty to proceed on his Inquiry, and the Court ordered Costs

Costs to be taxed. But the Question then was, What Costs the Plaintiff in Prohibition was to have: For the Defendants it was insisted that the Plaintiff ought not to have Costs of the Suggestion, and of the Proceedings incident thereto, as it had been adjudged in this Court, Hil. 2 Geo. I. *Wills & al' versus Turner & al'*, because those Costs were ordered upon reading the Act of Parliament of the 8th. and 9th. of Wm. III. which expressly gives Costs after Plea pleaded, or Demurret joined, and so consequently the Costs of the whole; but in this Case it would be hard for the Defendant to pay any Costs before the Declaration, because he was prosecuted for a Contempt at Common Law, as Judge of the Spiritual Court, and he could not possibly be in Contempt before the Rule was made absolute to stay his Proceedings: For the Plaintiff it was insisted that he should have the Costs of the Suggestion, and likewise of the Motion for a Prohibition, these being Proceedings in this Court, and taxable by the Prothonotary as well as the Rest. But after Debating the Matter, the Court made an Order, That the Plaintiff should have Costs only from the Time that the Rule for the Prohibition was made absolute and fixed this as a standing Rule.

Mic. 7 Geo. I.

See 114

Mic. 7 Geo. I.

A Motion by Mr. Serjeant Webb, on the Behalf of three poor Prisoners of the Fleet, craving an Allowance out of the Poor's Box; the Lord Chief Justice King declared, that those poor Prisoners, on making such Oath as is usual, and applying to him at his Chambers, should have an Order for the Allowance.

Prisoners intitled to the Poor's Box.

See the Rule *Easter 3 Geo. II. sec. 16.*

Locke versus Hyet and others.

Foley.

Mic. 7 Geo. I.

IN Prohibition a Motion by Mr. Serjeant Pergelly, to have Liberty to inspect Parish Books, and to have them produced at the Trial, and granted.

In Prohibition Liberty to inspect Parish Books.

Post. *Knight*

v. Wotton, Hil. 11 Geo. I.

Davis v. Edwards, Hil. 5 Geo. II.

Mich. 7 Geo. I.

*Anonymus.*

Mich. 7 Geo. I.

Costs denied upon an Action for Words, tho' the Defendant pleaded a special Justification.

IN an Action on the Case for Words, to which the Defendant pleaded a Special Justification, the Jury having found Damages under 40s. it was moved that the Prothonotary might tax for the Plaintiff Costs de Incremento; and it was insisted on as a constant Rule, that in all Cases where there is any Special Pleading, the Plaintiff shall recover his Costs de Incremento; but the Court held that it is still an Action for Words within the Statute 21 Jac. I. cap. 16. and must be governed thereby, and if the Plaintiff does not recover above 40s. he shall have no more Costs than Damages.

Pempe qui tam, &c. versus Tinsley.

Costs on a Qui tam after Verdict for the Defendant.

Borret.

Trin 7 Geo. I. 1721.

Salk. 30. But see Gynes v. Stephenson. Hil. 6 Geo. II. where on Verdict for the Plaintiff the Court held he should have no Costs.

IN Debt on a Statute of 5 Eliz. cap. 4. sec. 31. for exercising a Trade contrary to the said Statute. Upon a Verdict for the Defendant, the Plaintiff moved the Court, that the Defendant should not be allowed any Costs; and upon hearing Counsel on both Sides, the Court seemed to Doubt and took Time to consider till next Term, and then Costs were allowed.

*Lobb versus Dale.**Cooke.*

Trin. 7 Geo. I.

Judgment on Demurrer, tho' neither the Defendant nor Plaintiff had delivered the Books to the two puisne Judges.

UPON a Demurrer set down the last Day of Arguments, it appeared that the Defendant's Attorney had accepted all the Demurrer-Books, but had not delivered them to the Two Puisne Judges; it was agreed that the Course of the Court had always been, that if the Defendant did not deliver the Two Books to the Puisne Judges, then the Plaintiff's Attorney might, and in such Case, the Defendant should not be heard till he had paid for those Books. But the Plaintiff's Attorney in this Case had not deli-

delivered the Books to the Puisse Judges, as he should have done; however the Court were unwilling the Plaintiff should be delayed by the Defendant's Attorney's Default; and therefore gave Judgment for the Plaintiff, notwithstanding he had not strictly complied with the accustomed Rule of Practice.

Note; The Practice has since been altered by a Rule of Court, made Mich. 6 Geo. II. which directs that the Plaintiff's Attorney shall deliver all the Documents Books to the Judges; and unless the Defendant's Attorney pay for two of the Books at least two Days before the Day of Argument, the Defendant shall not be heard by his Counsel.

Keep & al. versus Bull & ux.

Trin. 7 Geo. I.

Lond. II. **A** Fine was to be acknowledged by a Deaf and Dumb Person; and upon his Wife's making it appear to the Court that she could converse with him by Signs, and give evident Proof of his Consent to what was proposed; and which was done to the Satisfaction of the Court; the Fine was ordered to pass.

Wright versus Dingley.

Mich. 8 Geo. I. 1721.

THE Court held, that in an Action of Debt upon a Recognizance, the Bail have till the Rising of the Court on the Appearance-Day of the Writ, to render the Defendant.

Anonymus.

Easter, 8 Geo. I. 1722.

IT was held by the whole Court, that a Plea in Abatement is void, if not delivered within four Days after Declaration delivered or left in the Office, tho' no Rule to plead be given.

Covert

Trin. 9 Geo. I.

Covert versus Allen.

Barret. Trin. 9 Geo. I. 1723.

A Motion to stay Proceedings in an Action of Debt on a Recognizance, because a Writ of Error was brought upon the Original Judgment; the Court were unanimous that the Plaintiff might proceed to Judgment, but Execution to stay till the Error was determined.

Newman v. Butterworth, Hil. 1734. contra. Ante 18.

Beck versus Nicholls.

Foley.

Trin. 9 Geo. I.

No Costs in an Action of Trespass tho' Special. Stat. 22 & 23 Car. II. c. 9. *Thomlinson v. White, East. 1735. Watkinson v. Sawyer, East. 1 Geo. II.*

AN Action of Trespass for breaking and opening Doors, and breaking and spoiling Locks and Bolts, and for beating and wounding the Plaintiff. Verdict for the Plaintiff, and 2 s. 6 d. Damages. The Court was moved for Costs de Incremento, but denied, because this is a Trespass against the Freehold, and an Assault and Battery joined, and in the first, the Title might have come in Question; and therefore in both Cases it was requisite that the Judge should certify, in order to intitle the Plaintiff to full Costs, which he had not done.

Rofiter versus Bolting.

Costs in Trespass.

Cooke.

Trin. 9 Geo. I.

Stat. 22 & 23 Car. II. c. 9.

Carruthers v. Lamb, Mich. 1734. Parker v. Davis, Mich. 1728. Thomlinson v. White, East. 1735.

T Respass for pushing the Tap out of a Barrel, by which Means the Beer was spilt, and Damages found under 40 s. The Court ordered full Costs to be taxed, for this is not within the Statute; for no Freehold could come in Question, and it is merely an Injury to the Plaintiff's Personal Property.

Atterbury

Miller, Serjeant at Law, against Seagrave and his Wife.

Hil. 10 Geo. I.

Foley.

Hil. 10 Geo. I. 1723.

IN Formedon in Remainder, Judgment was given for the Tenant upon Demurrer; the Question was whether Costs should be given according to the Act of the 8th and 9th of W. III. cap. 11. It was insisted by the Counsel for the Demandant, that the Tenant ought not to have Costs, because if the Demandant had recovered he could have had none, and so in Abatement, tho' after Demurrer, because the Plaintiff should have had none, since he recovers no Damages, the Judgment not being final, but only a Respondens ouster, and tho' the Act of Parliament is general, that after Demurrer and Judgment for the Defendant, he shall have his Costs; yet in the Case of Abatement, because the Plaintiff is intitled to none, neither shall the Defendant have any Costs, within the Meaning of the Act, the Intent of the Statute being only to extend the Defendant's Remedy for Costs to Demurrers in such Actions and Cases, where Costs were before recoverable upon a Verdict or Nonsuit.

No Costs in Formedon after Demurrer; and Judgment for the Defendant, on Stat. 8 & 9 W. III. c. 11. 4 Jac. I. c. 3.

Salk. 194.

And tho' in Prohibition * after Demurrer joined the Defendant is always allowed his Costs; yet this is because Costs are recoverable therein upon a Verdict or Nonsuit, to which Cases only the Act was intended to extend. Cur' advisare vult. Lord Chief Justice King, Mr. Justice Dormer, and Denton inclined against Costs; Mr. Justice Tracey for Costs. Afterwards this Point came on again, Trin. 10 Geo. I. and was solemnly debated, when the Court still inclined to allow no Costs, but took further Time to consider of it; and at last resolved that no Costs should be allowed.

* So in Quare Impedit. Ante 4.

Dean & al' versus Coward,
(*Bigg, Jun. Vouchee, de terris in Com. Berks.*)

Trin. 10 Geo. I. 1724.

A Motion to amend a Recovery by putting in these Words, in Paroch' se'e Marie in Wallingford, and in Paroch' de Wargrove, and a Rule to shew Cause granted; this was afterwards opposed strongly, King Chief Justice, Dormer and

Amendment of a Recovery denied.

H

Denton

Trin. 10 Geo. I. Denton against the Amendment; but Tracey seemed for it, tho' the Parties were all Dead, and Purchasers in the Case. It was denied chiefly because, if the Amendment was made, the King would lose his Fine for the Parcels to be inserted, but see the same Case after, Mich. 13 Geo. I. where the Amendment is granted; and see *Jenkinson versus Staples*, Hil. 6 Geo. II.

Amendment
of a Recovery
denied.

Ante 25.
See post. *Dean*
v. Coward,
Mich. 13
Geo. II.

where an A-
mendment was
granted, and
Fills added, &
Jenkinson v.
Staples, Hil.
1732.

Cranmer versus Cranmer,
(*Boucher Vouchee*, de terris in Com. *Wilts.*)

Trin. 10 Geo. I.

MOTION to amend a Recovery by putting in Rectoria de Lea & Decima eidem spectan'; it appeared to be Right in the Deed to lead the Uses, and moved at the Vouchee's Request. Chief Justice: The King will lose his Fine, so the Amendment was denied.

Walpole versus Robinson.

Mich. 11 Geo. I. 1724.

To amend Is-
sue of Com-
peruit ad di-
em.
Post. *Eaton &*
ux' v. Wilkins
& ux', Trin.
1734.

IN Debt upon a Bail-Bond, the Defendant pleaded Comperuit ad diem: And now a Motion was made to amend the Issue, in which the Condition of the Bail-Bond is misrecited, by making it agreeable to the Bond, on Payment of Costs; which was granted accordingly.

Knight versus Wotton.

Borret.

Hil. 11 Geo. I. 1724.

To inspect the
Publick Books
of the Dean
and Chapter
of St. Paul's,
&c. and take
Copies.
Ante 6, 21.
Post. *Davis v.*
Edwards,
Hil. 5 Geo. II.

A Motion by Mr. Serjeant Glyde, for Liberty to inspect the Publick Books of the Dean and Chapter of St. Paul's and Bishop of London, to see if there be any Confirmation entered of the Lease granted by the Archdeacon of Colchester, and to take Copies; and a Rule was granted accordingly.

I

Clarke

Clarke, un' Attorn', versus Godfrey.

Borret. Easter, 11 Geo. I. 1725.

A Case made before Lord Chief Justice King, upon a Trial at Nisi prius, in an Action brought by the Plaintiff as an Attorney, for fees, to which the Defendant had pleaded Non Assumpsit; the Bill was not delivered till after Notice of Trial; the Question was, Whether the Bill ought not to be delivered before the Action brought?

When an Attorney was to deliver a Bill in Order to sue for his Fees.

In Trinity Term following it was again moved, and Justice Tracey said, he thought that the Defendant ought to have pleaded, that the Bill was not delivered according to the Stat. 3 Jac. I. which enacts, That every Attorney shall deliver a true Bill to his Client, before he shall charge him with any Fees. And this Matter having been Debated in Court several Times, and it being insisted that the Practice had been for many Years to deliver a Bill any Time before the Trial; the Court was of Opinion that this was contrary to the Act of Parliament, and resolved for the future that no Action be brought for fees, till after a Bill delivered.

Post. Griffith v. Squire, Mich. 4 Geo. II. Marsh v. Carter, Mich. 8 Geo. II.

It is now settled by the Act of 2 Geo. II. cap. 23. for the better Regulation of Attornies and Solicitors, that no Attorney or Solicitor shall commence or maintain any Action for the Recovery of any Fees, Charges or Disbursements, at Law or in Equity, till the Expiration of one Month after the Delivery of his Bill to the Party or Parties to be charged therewith, or left for him, her or them, at his, her or their Dwelling-House, or last Place of Abode; written in a common legible Hand, and in the English Tongue, (except Law-Terms and Names of Writs) and in Words at Length, (except Times and Sums) and subscribed by the Attorney.

Allgood versus Howard.

Cooke. Easter, 11 Geo. I.

A Motion was made to stay Proceedings against the Defendant, who had been charged with a Declaration at the Plaintiff's Suit, while he remained in the Fleet Prison, for a Contempt of the Court; it was insisted that the Plaintiff could not deliver a Declaration against a Defendant in Prison for a Contempt, without having previously obtained the Leave of the Court for that Purpose; of which Opinion were the Court, and ordered Proceedings to stay accordingly; but the Court being now moved for that Purpose, gave Leave to deliver a Declaration de novo against the Defendant.

A Prisoner on a Contempt can't be charged with a Declaration without Leave of the Court.

Stat. 8 & 9 W. III. cap. 27.

Note;

*East. 11 Geo. I.
Post. Pepper
v. Barnden,
Mich. 1726.*

Note; It was also held that a Person in Prison for Felony, &c. cannot be charged with a Declaration, without Leave of a Judge, the Attorney General, or proper Court.

Colt, Ar. versus Hall, Ar.

Trin. 11 Geo. I. 1725.

Motion to set
a side an Exi-
gent returned
before the
*Quarto die
post.*

Ante 18.

A Motion to set aside the Return of the Exigent, and that the Defendant might be admitted to supersede the Exigent (altho' the Sheriff had returned the Defendant Outlawed) because the Defendant had appeared before the Quarto die post, and insisted that he had four Days after the Return of the Exigent, to appear and supersede it. The Principal Question was, Whether, the Defendant not having appeared before, or on the Return-Day, and the Sheriff having actually returned the Defendant Outlawed before the Supersedeas issued, such Return should not be conclusive to the Defendant; or whether the Defendant had not four Days after the Return of the Exigent to appear, and put in Bail, and therefore the Outlawry on the Return-Day irregular: For the Plaintiff, was cited a Case in Point, which had been determined lately in the King's Bench, between Sansome and Gore, and there Lord Chief Justice Raymond declared, that the Return of the Exigi facias on the Return-Day was conclusive, and refused to relieve the Defendant. But the Court, on hearing Counsel on both Sides, (notwithstanding that Case) held that, by the Practice of this Court, Defendants had always had till the Quarto die post to appear to the Exigent; and ordered that the Outlawry should be discharged at the Plaintiff's Expence, but gave no Costs to the Defendant.

Anonymous.

Mich. 12 Geo. I. 1725.

IT was said by the Court, that upon or before the Allowance of any Writ of Error, or reversing any Outlawry, the Defendant must still enter into a Recognizance, with condition to satisfy the Condemnation Money, according to the Stat. 31 Eliz. cap. 3. sect. 3.

Recognizances on Outlawries. Vide Stat. 4 & 5 W. & M. c. 18.

Dockary versus Lawrence.

Borret. Easter, 12 Geo. I. 1725.

A Motion to amend a Plea in Abatement, by putting in Culpabilis instead of Capitalis, which appears to be only a Misspelling of the Clerk, and two Counsel heard on each Side. For the Plaintiff many Cases were cited against Amendments. The Defendant's Counsel cited none.

Plea not amended in Abatement. Salk. 52, 49. 2 Keb. 70. 5 Mod. 69. Smith v. Scudamore, 2 Geo. I. where Amendment was said to have been denied.

Eyre Chief Justice, Pleas in Abatement have generally been denied to be amended, because they are Dilatory and do not go to the Right of the Action, and it will be dangerous to make a Precedent, wherefore the Amendment was denied.

Hingham versus Collin.

Borret. Easter, 12 Geo. I.

ON a Motion to set aside a Non-pros for want of a Declaration, because the Defendant's Attorney had not called for a Declaration the same Term on which the Writ was returnable, but had called for a Declaration, and signed a Non-pros the Term after : The Court were of Opinion it was a good Calling, and held the Non-pros to be regular ; afterwards by Consent it was set aside on Payment of Costs.

In what Time a Non-pros may be signed for want of a Declaration. Reg. Cur' Hil. 9 Ann. Reg. 2.

Mich. 13 Geo. I.

Deane & al' versus Coward,
(*Bigg, Jun. Vouchee, de terris in Com' Berks.*)

Mich. 13 Geo. I. 1726.

Recovery & amended.

Ante 85. S.O.

Bedford v. Cullen, ante 9.

Laming v. Besland, ante 17.

Cranmer v. Cranmer, ante 26.

subseq. an Addition of Parcels was denied.

Post. *Jenkinson v. Staples*, Hil. 6 Geo. II. *Shepherd and Harris*, Hil. 9 Geo. II.

THE Motion made in Trinity Term 10 Geo. I. for amending a Recovery, was this Term revived, the Judges being changed, instead of King, Tracey, Dormer and Denton, now Eyre, Price, Page and Denton; the chief Objection against it was, that the King would lose his Fine by such considerable Bills being added: But the Court declared unanimously now, that tho' the Parties were Dead yet as it appeared by the Deed that it was with their Consent, the Bills omitted by the Clerk should not prejudice a Family; and therefore it being the Intent of the Parties at that Time, the Court ordered the Amendment to be made, and so made the first Rule absolute.

Many Precedents were cited, and Rules for Amendments produced, the chief of which relating to this Head, were as follows, viz.

Wrightwick & al' versus Masters, Trin. 13 Car. I. A Recovery of three Messuages in New Church, L. and M. but New Church totally omitted; an Amendment was ordered.

Drake & al' versus Biddulph, Mich. 13 Car. I. *Gulston*. A Fine prosecuted (East. 13 Car. I.) of two Messuages and one Garden, that a Recovery thereof might be had; but by Mistake (in Trin. following) the Recovery was suffered of one Messuage and one Garden, and now ordered to be amended.

Courtney versus Blake, Hil. 3 Ann. *Borret*. The Writ of Covenant and all Entries and Proceedings thereon amended, by inserting the Words (& Knowlton.)

Parker & al' versus Cotton & ux', Mich. 1650. The Village of W. omitted in a Fine levied Trin. 1649. but ordered to be inserted as well in the Writ of Covenant as the other Parts of the Fine, on the Oath and with the Consent of the Deforcant.

Mich. 13 Geo. I.

Cock versus Green.

Foley.

Mich. 13 Geo. I.

A Motion to set aside a Scire Facias against Bail in London, upon a Recognizance taken in Seajants Inn in Fleetstreet, London, and Recorded at Westminster; the Court were of Opinion that the Scire Facias might issue either into London or Middlesex; but it was said, that in the Case of a Recognizance taken in the King's Bench, the Entry is coram Domino Rege apud Westm', and therefore must be in Middlesex only.

Scire Facias in London and a Recognizance taken in Seajants Inn, Fleetstreet, and held good. Salk. 564, 600, 659. Dalton v. Teasdale, East. 2 Geo. II. See Cases in Law and Equity 290.

Smith versus Anderton.

Mich. 13 Geo. I.

A Copy of a Special Original was served on the Defendant, and the Plaintiff proceeded thereon according to the Stat. 13 Geo. I. c. 29. but all was set aside by the Court, for a Copy of the Capias should have been served.

Vide post: Peter v. Rogers, Mich. 11 Geo. II.

Pepper versus Bawden, Ar'.

Borret.

Mich. 13 Geo. I.

A Declaration delivered to a Prisoner in the Fleet, who before stood charged with Contempts in Chancery; the Defendant accepted of it, and let the Plaintiff proceed to Judgment, and then moved the Court to set aside that Judgment upon the standing Practice, that no Proceedings should be against a Person charged with Contempts, without Leave of the Court first had; but the Court, on hearing Counsel on both Sides, declared that altho' the Plaintiff had not applied for Leave, yet the Defendant having accepted of the Declaration, and suffered Judgment to go against him before he complained thereof, he had waived the Advantage which he might have taken of the Irregularity and should be bound by it, and therefore they discharged the Rule which had been granted to that Cause.

Declaration delivered to Prisoner, and accepted, and Judgment before Complaint, held good.

Ante 27.

Jackson

Hil. 13 Geo. I.

*Jackson versus Duckett.*

Where Special
Bail must be

Hil. 13 Geo. I. 1726.

put in to an
Action of
Debt upon a
Judgment.
Post. *Deflores*
v. Tut, East.
13 Geo. I.
Revel v.
Snowden,
Mich. 6 Geo.
II. Stat. 12
Geo. I. c. 29.

IN an Action of Debt upon a Judgment, wherein above 10 l. had been recovered, the Question was, Whether the Defendant should be obliged to put in Special Bail? The Court were of Opinion, that if there was Bail in the Original Action, then no Bail is required in the Action upon the Judgment; but if no Bail in the Original Action, then Bail is to be put in where the Debt is above 10 l. and an Affidavit made thereof according to the late Act of Parliament.

Turner versus Shrimpton.

Cooke.

Hil. 13 Geo. I.

Declaration
delivered to
the Defen-
dant, not good
if his Attor-
ney is known.
Post. *Jy v.*
Francia,
Mich. 3 Geo.
II.

A Declaration was delivered to the Defendant, whereas the Plaintiff's Attorney knew who was Attorney for the Defendant; the Court declared that such Delivery was irregular, and ordered an Imparance; for he should have delivered it to the Defendant's Attorney, or have left it in the Office, and given Notice thereof to the Attorney.

H. Englefield, per Catharinam Englefield prox' Amicam, versus Round.

Cooke.

Hil. 13 Geo. I.

Prochein Amy
to pay Costs
for her De-
fault.

Ante 14.
Post. *Hayden*
v. Norton,
Mich. 4 Geo. II.

A Motion that the Prochein Amy should pay the Costs taxed for not proceeding to Trial; and upon hearing Counsel on both Sides, it was ordered accordingly.

And the Lord Chief Justice declared that every Prochein Amy is made so by their own Consent, and that they, as well as Guardians and Executors or Administrators, are liable to pay Costs for their own Default.

Note; *Roper*, by next Friend, against *Harrison*, Mich. 10 Geo. II. on a Nonsuit; it was likewise resolved that the *Prochein Amy* should pay Costs.

Carter, Ar', versus Dormer, Ar'.

Cooke.

Hil. 13 Geo. I.

A Motion to change the Venue after Plea pleaded and Notice of Trial given, but denied by the whole Court.

Hil. 13 Geo. I.

Venue not changed after Plea pleaded See *Sabor v. Pot, Trin. 3* & 4 Geo. II, *Treasure v. Wright.* Mic. 4 Geo. II.

Rayner versus Stamp.

Borret.

Hil. 13 Geo. I.

UPON a Motion against a Bailiff of a Liberty, for retaking a Defendant on a Sunday that had given in sufficient Bail; the Court seemed to be of Opinion that he might retake the Defendant on a fresh Pursuit; but in this Case, Bail was put in above, but no regular Exception taken at the Filazar's Office, which ought to have been done; so an Attachment was granted against the Bailiff.

Attachment against a Bailiff for retaking the Defendant on a Sunday. Exception against Bail.

Note; Exception against Bail must be entered in the Bail-book or upon the Bail-piece, for no Exception by Notice is good without that is first done.

Post. *Busby v. Walker, Mic. 3 Geo. II.*

Watson versus Jordan, an Attorney.

Cooke.

Hil. 13 Geo. I. Rot. 1643.

UPON an Information against the Defendant for practising as an Attorney after Conviction of Subornation of Perjury, upon hearing Counsel on both Sides, on a Summary Examination, pursuant to the Act of the 12th of Geo. I. cap. 29. several Variations were insisted upon, viz. Contrefur' for Contrafactur' in the Recital of the Commission of Oyer and Terminer, and the Word Majorum instead of Majorem, and a Variance between the Issue delibered and the Issue entered on the Roll, viz. Woolstaston instead of Woolaston, and the Word Regnorum left out of the Record; and that the Proceedings ought to be as strict as other Criminal Proceedings at Common Law. On the other Side it was said, that whatever Variance there is, it appears that the Persons in Commission had Power to try the Crime of which he was convicted: Afterwards another Objection was taken, that the Information says, Contra formam Statuti, whereas it does not appear that the Defendant has acted contrary to the Statute, for

An Information on the Stat. 12 Geo. I. cap. 29. against the Defendant for practising after Conviction for Subornation of Perjury.

Hil. 13 Geo. I. tho' the Act says, if he shall praeside he shall be transported, yet it is not enacted that he shall not praeside.

Note; There being no restraining Words in the Statute to support this Information, the Plaintiff did not proceed further therein.

Delafield versus Jones.

Poley.

Hil. 13 Geo. I.

Process to be served by a literate Person.

Stat. 12 Geo. I. cap. 29.

THE Court declared that the Service of Process by a Bailiff, who could neither write nor read was not good, and that the Stat. 12 Geo. I. cap. 29. intended that Process should be served by literate Persons, because it directs that Affidavit shall be made of the Service of a Copy of the Process.

Farmer versus Jenkinson.

Cooke.

Easter, 13 Geo. I. 1727.

No Declaration to be delivered to a Prisoner after two Terms.
Reg. Cur. East. 8 Geo. I. Hil. 14 & 15 Car. II.

THE Court declared that where a Defendant being in Custody is intitled to a Superseas, the Plaintiff can't detain him by delivering a Declaration, tho' the Defendant neglects to procure himself to be superseded.

Deflowr versus Tutt.

Cooke.

Easter, 13 Geo. I.

Bail. Ante 32.

ON a Bottomry Bond for Payment of Money inter alia, the Court inclined to think the Defendant should give Bail.

Laycock versus Arthur.

Cooke.

Easter, 13 Geo. I.

Scire facias against Bail. Ante 18. Post. Price & Selby v. Lewis, Hil. 8 Geo. II.

THE Court held, that in Order to charge the Bail, a Ca' Sa' against the Principal must be left with the Sheriff four Days before it is returnable.

Jennings versus West.

East. 13 Geo. I.

Coke.

Easter 13 Geo. I.

A Motion to set aside an Execution executed : The Case was, the Defendant suffered Judgment by Default, and said till after Execution was sent down into Dorsetshire, and then got a Writ of Error allowed, and served the Agent with the Allowance thereof, and tho' it was impossible to stop the Execution in Dorsetshire, the Writ having been sent down some Time before; yet the Court set aside the Execution, and ordered Restitution, and would not give the Plaintiff his Costs; for the Allowance of a Writ of Error is a Superseas from the Time of the Allowance, tho' the Sheriff executes the Writ before Notice thereof was given; and yet neither the Plaintiff nor his Attorney, nor Agent nor the Sheriff, were blameable for any Misconduct.

Execution^o executed, yet a Writ of Error being allowed before it was executed, and Notice only to the Agent, set aside.

Post. 39
Miller v.
Miller, Mich.
1 Geo. II.

Lawson versus Hambleton.

Cooke.

Easter, 13 Geo. I.

THE Court held, that in all Cases the Plaintiff's Attorney may sign Judgment, for refusing to pay for the Copy of an Issue or Demurrer-Book, except where the Defendant is a Prisoner, and in that Case he is restrained from signing it, only where no Attorney appears to be concerned for the Prisoner.

Judgment for not paying for Issue or Demurrer-Book.

Aplin versus Constable.

Foley. Trin. 13 Geo. I. 1727. Entered Trin. 12 Geo. I. Rot. 652.

UPON a Rule made East. 13 Geo. I. for the Plaintiff to shew Cause why Costs should not be taxed upon a Nonsuit at the Assizes; on hearing Counsel on both Sides, it appeared that the Nonsuit was on an Issue in Abatement, and the Court held clearly, that upon a Nonsuit on such an Issue, the Defendant shall have his Costs, for if it had been found for the Plaintiff, it would have been Peremptory, and he should have had his Costs; and altho', if the Defendant has

Costs upon a Nonsuit at the Assizes upon an Issue in Abatement.

Ant. 4. 25.

Trin. 13 Geo. I. has Judgment on a Demurrer in Abatement, he shall have no Costs, yet this is because the Suit would not have been ended by such Demurrer, in case Judgment had been given for the Plaintiff, but a Respondeas Ouster only must have been awarded, upon which the Plaintiff should have had no Costs.

Lane and others versus Wilkinson.

Trin. 13 Geo. I.

Money paid into Court. *Ante 5. Post. Rathbone, v. Stedman, Trin. 2 & 3 Geo. II. Maddox v. Pafson, East. 8 Geo. II.* MONEY being brought into Court on the Common Rule, and the Plaintiff nonsuited, the Defendant moved to have the Money out of Court, but the Motion was denied; for he paid it into Court, as knowing and being conscious that he owed the Plaintiff so much, and therefore the Plaintiff shall have it.

Bristow & al' versus Dickon.

Borret.

Trin. 13 Geo. I.

Cap' utlagat' not good, being tested after Defendant's Death. THE Court held that no Capias utlagatum can be sued out after the Death of the Defendant. *Note;* In this Case the Writ was tested after the Death of the Defendant.

Gardiner versus Forbes.

Trin. 13 Geo. I.

Venue not changed into a Town and County. *Post. Lane v. Newman, Hil. 6 Geo. II. Herbert v. Shaw, Trin. 6 & 7 Geo. II. Ward v. Colclough, Trin. 8 & 9 Geo. II. Lord Griffin v. Bugby, Trin. 10 Geo. II. Box v. Read, Trin. 10 Geo. II. Mills v. Johnson, Mic. 10 Geo. II.*

AN Action for Words laid in London, and a Motion made to change the Venue, upon Affidavit of the Words being spoken in the Town of Southampton, but denied upon hearing Counsel on both Sides, because the Court doth not use to change the Venue into a City or Town and County within it self, without Consent of the Parties.

Note; *Earby versus Windovers, Hil. 5 Geo. II. Foley.* For the same Reason a Motion to change the Venue from *Middlesex* to the City of *York* was denied.

In what Time the Defendant must apply to the Court to have the Venue changed, *vide post. Costar versus Standen, Hil. 8 Geo. II.* and the Cases there cited.

And *Robins* versus *Webber*, *Hil. 1 Geo. II.* a Motion to change the Venue from *Middlesex* to the City of *Exon.* was denied. *Trin. 13 Geo. I.*

But vide post. *Biddolph* versus *Brown*, *Hil. 1 Geo. II.* where it has been granted into *London.*

Le Pla versus *Warren.*

Cooke.

Trin. 13 Geo. I.

UPON a Demurrer to Nil debet pleaded to a Declaration on a Bail-Bond, the Court were unanimously of Opinion that such Plea was not good. *Nil debet no Plea to a Declaration on a Bail-Bond.*

May versus *Annis.*

Cooke.

Trin. 13 Geo. I.

IN this Cause it was resolved, that Ne Recipiatur in London and Middlesex might be entered after eight a Clock in the Evening, the Day next but one before the Day of Sitting.

Time of entering Ne recipiatur.
Reg. Cur. Pas. 1 Jac. II. Hil. 8 Geo. II. reg. 2. Post. Duel v. Stow, Mich. 1730.

Gibson versus *Quilter.*

Foley.

Mich. 1 Geo. II. 1727.

UPON a Writ of Error, the want of a Warrant of Attorney had been assigned for Error, and a Certiorari returned, that no Warrant of Attorney was filed, and a Motion was made for Leave to file a Warrant of Attorney for the Plaintiff in the Original Action, and granted upon the Common Rule, to pay Costs if the Plaintiff in Error would not further proceed: A second Certiorari was sued out, and a Return thereto, that Warrants were filed: Afterwards upon Motion, a Rule was made to shew Cause why the Rule for filing the Warrant of Attorney should not be set aside; and now upon hearing Counsel on both Sides on shewing Cause, and after great Debate, the Judges gave their Opinions seriatim, and set aside the Rule for filing the Warrant.

Warrant of Attorney denied to be filed after Writ of Error, and Certiorari returned that no Warrant was filed.
Ante 10. Post. the Dutch East India Company v. Henrighes, Esq. 1 Geo. II.

Note; This was for want of filing the Plaintiff's Warrant of Attorney.

L

Beake

Mich. 1 Geo. II.

Beake & al' versus Smith, Ar'.

Cooke.

Mich. 1 Geo. II.

On a Testatum
Capias ad re-
spondend. to
Durham; the
Party must be
served with
the Bishop's
Precept.
But see Stat.
5 Geo. II.
cap. 27. and
the Construc-
tion thereof,
Post. Byer
v. Whitaker
Trin. 8 & 9
Geo. II.

IN an Action of Covenant arising in London, a Testatum Capias issued to the County. Palatine of Durham, and a Copy thereof having been served on the Defendant, the Court was moved to stay Proceedings; and Counsel being heard on both Sides, the Court gave their Opinions seriatim, that the Testatum Capias to the Bishop was not the Process that the Defendant should be served with, pursuant to the Stat. 12 Geo. I. cap. 29. but that the Capias which the Bishop issues, is the proper Process wherewith he should have been served, and upon which he would have been arrested, if this Act had not been made, and the Act hath not altered the Law in that Particular; and thereupon the Court stayed the Proceedings which had been had on the Service of the Testatum Capias.

Boyd qui tam against The Hundred of Exminster.

Venire on Sta.
Hue and Cry,
13 E. I.
27 Eliz. cap.
13.

* Stat. 4 &
5 Ann.

A Motion to set aside the Trial had in this Cause, because the Venire was awarded de Corpore Com. alias quam de Hundred de Exminster, whereas the Action was on a penal Statute, viz. the Statute of Hue and Cry, and so not within the * Act for the Amendment of the Law. But the Court were of Opinion that the Statute of Hue and Cry could not be esteemed a Penal Statute, but an Act made to give the Party a Satisfaction for a Wrong done, and therefore held the Venire well awarded.

Delafountayne versus Myngs.

Cooke.

Mich. 1 Geo. II.

Plea in Abate-
ment without
Affidavit, or
without a Ser-
jeant's Hand,
not to be re-
ceived.

ON a Motion to set aside a Judgment, it appeared that a Plea in Abatement had been pleaded without a Serjeant's Hand, and without an Affidavit to verify it, tho' the Truth of the Plea did not appear to the Court: Per Cur' this is no Plea, and the Judgment must stand.

Note; By the Stat. 4 & 5 Ann. such Plea is not to be received, unless the Party offering the same doth by Affidavit prove the Truth thereof, or shew some probable Matter to the Court

Court to induce them to believe that the Fact of such dilatory Plea is true.

And *Note*; *Wilson, Executor, versus Palmer, Mich. 12 Geo. I.* It was likewise held that such Plea, where the Truth thereof does not otherwise appear to the Court, without an Affidavit to verify it was no Plea.

And *Cartwright versus Skrimshire, Hil. 6 Geo. II. Cooke*, the like Resolution.

Mich. 1 Geo. II.
Post. Tomkin v.
Perry, Trin.
1735.
Hart v.
Jewels, East.
1733.

Miller versus Miller.

Cooke.

Mich. 1 Geo. II.

A Motion for Restitution after a Writ of Error; the Fieri facias was sued out on Friday, the Warrant delivered that Evening to the Officer, a Writ of Error allowed on Saturday Morning, and Notice delivered at the Plaintiff's Attorney's House about a Quarter after Eleven that Morning, Execution executed before the Plaintiff's Attorney could countermand it, viz. about One at Hamersmith. Per Cur': The Allowance of the Writ of Error with the Clerk of the Errors, is a Superfedeas without Notice of such Allowance. And tho' it was insisted, that this Execution being taken out before the Allowance of the Writ of Error might be executed, notwithstanding such Allowance, the Execution being awarded by the Court; yet it was declared to be the settled Opinion of the Court, that the Allowance of a Writ of Error is a Superfedeas, even where the Execution issues before and is executed after the Allowance thereof, without Notice of it.

The Allowance of a Writ of Error is a Superfedeas if Execution be executed after the Allowance.
Philips v. Thompson,
3 Lev. 191,
312.
1 Vent. 30.
2 Keb. 508.
Mod. 28.
Jennings v. West, Ante 35.
The Allowance is Notice of it self, Salk. 321.
Yet to bring the Attorney into Contempt he must have had Notice thereof. Quære, If the Attorney be known, 1 Ro. Ab. 492.

Ilatt & ux' versus Lisset.

Cooke.

Hil. 1 Geo. II. 1727.

IN a Homine replegiando for taking the Plaintiff's Wife, a Capias, Alias & Pluries issued; on the Pluries the Sheriff of Berks returned Elongata; a Capias in Withernam issued; and a Habeas Corpus was moved for to bring up the Body of the Defendant (who had been arrested on the Capias in Withernam) into Court; upon the Return, the Defendant was brought into Court, and the Plaintiffs were called up-

Upon a Homine replegiando the Proceedings and Recognizance taken.

on

Hil. 1 Geo. II. on to declare instant, for want of which they must have been forthwith nonsuited; thereupon the following Declaration was delivered in Court, and a Plea put in thereto instant, viz.

Mich. 1 Geo. II.

Berks, ss. **N**ehemiah Lisset, Gent. was attached to answer William Ilatt and Sarah his Wife of a Plea, wherefore he took the said Sarah, and her so taken detaineth, &c. and whereupon the said W. and S. by H. M. their Attorneys complain that the said N. the 20th Day of May in the first Year of the Reign of our now Lord the King, at Wantage in the County aforesaid, took the said S. and her so taken as yet detaineth, whereby they say that they are injured, and have received Damage to the Value of 5000 l. and thereupon they bring Suit, &c.

And the aforesaid Nehemiah in his proper Person comes and defends the Force and Injury, when &c. and saith, that he did not take her, the said Sarah, in the said Declaration mentioned, in Manner and Form as the said William Ilatt against him above complains: And of this he puts himself upon the Country.

Mich. primo Geo. II.
Regis.

Berks, ss. **N**ehemias Lisset Gen' Attach' fuit ad respondend' Will'o Ilatt & Sare ux' ejus de placito quare ip'am Saram cepit & captam tenet, &c. unde iidem W. & S. per H. M. Attorn' suum queruntur qd' pred' N. 20 die Maii Anno Regni D'ni Regis nunc primo apud Wantage in Com' pred' ipsam S. cepit & ipsam adhuc captam tenet unde dicunt qd' deteriorat' sunt & dampnum h'ent ad valenc' quinque Mille Librar' & inde produc' sectam, &c.

Et p'd'us Nehemias in pr'ia persona sua ven' & defend' Vim & injur' quando, &c. Et dicit qd' ipse non cepit ipsam pred' Saram in Narr' pred' mentionat' modo & forma prout pred' Will'us Ilatt & Sara ux' ejus sup'ius versus eum queruntur: Et de hoc ponit se super p'riam.

Registrum Bre.
79, 80.
F. N. B. 66,
67, 68.
Rastal's Ent.
402.

Upon the Plea being delivered in Court the Defendant was admitted to Bail, and put in four Bail; the Defendant's own Recognizance was in 500 l. the other Bail in 250 l. each, viz. Sir John Eyles, Bart. Benjamin Styles, Esq; Sir Conrad Springell, Knt. and Joseph Chitty, Esq; the Recognizance was to the Effect following, viz. The Party himself is bound to the Plaintiff in 500 l. and the Bail are

are separately bound to the Plaintiff in 250 l. to be levied of their Goods, Chattels, Lands and Tenements, upon Condition that the said N. Lisset do appear de die in diem, in this Court, and if Judgment be given against the said Defendant, that the said Defendant render his Body in Withernam, to remain in Custody, till he render Sarah the Wife of the said Plaintiff, and permit her to go at large; upon this, Recognizance being taken, the Sheriff was discharged, and the Defendant set at Liberty.

Hil. 1 Geo. II.

Upon the Trial of this Cause the Plaintiffs were nonsuited, and a Question arose, which now came on to be moved in Court, Whether the Defendant should have Costs, and the Court held clearly that the Defendant should have Costs by the Statute of 4 Jac. I. cap. 3. which enacts, That the Defendant shall have Costs in all Cases where the Plaintiff might have Costs; and in a Homine Replegiando the Plaintiff should have had Costs, by the Statute of Gloucester, 6 E. I. cap. 1. if he had prevailed, for Damages are to be recovered therein.

Costs for the Defendant.

Upton versus Pullyn.

Foley.

PER Dures pleaded without a Serjeant's Hand, upon which Occasion a Question arose, what Sort of Pleas were to have a Serjeant's Hand; It was held by the Court and settled, that Comperuit ad diem, Son assault Demesne, Plene Administravit, Reins per discent, Ne unques Executor, Nul tiel Record, Per Minas, Per Dures, Infra Etatem & Solvit ad diem need no Serjeant's Hand, but Non assumpsit infra sex annos must have a Serjeant's Hand.

What Pleas may be pleaded without a Serjeant's Hand.

Biddolph & al' versus Browne.

A Motion to change the Venue from the County of Middlesex to London, on Affidavit that the Cause of Action, if any, arose in London; and the Court ordered the Venue to be changed; for London has always been considered in this respect as a County at large, and such Motions have usually been granted, tho' not to any other City or Town which is a County of itself.

Venue changed to the City of London. Ante 36. Gardiner v. Forbes, Post. Lane v. Newman, Hil. 6 Geo. II.

Hil. 1 Geo. II.

*Durham versus Price.*

No Inquiry
for Defendant
in Replevin
where there
is no Avowry.

IN Replevin after Non cepit pleaded, and a Return' habend' awarded, the Defendants procured a Writ of Inquiry of Damages to be executed; but the Court set aside the Writ of Inquiry and the Inquisition taken thereon, because there can be no Inquiry in Replevin for the Defendant where there has been no Avowry; for on all Pleadings in Replevin where there has been no Avowry the Defendant has a Non-pross and Costs; and the Avowry which is in the Nature of a Declaration, is the Ground of an Inquiry for the Defendant.

*Cotton, Ar', versus Hormonden.**Borret.*

Interest given
on a Note
upon the Exe-
cution of an
Inquiry, and
confirmed by
the Court.
*Randolph v.
Rogier, Trin.
2 Geo. II.*

A Motion to set aside a Writ of Inquiry, because the Jury had found Interest on the Note mentioned in the Plaintiff's Declaration; but the Court were of Opinion, that the Jury had done well to give Interest, and declared that the Plaintiff was intitled to the full Interest from the Time of the Money lent, and discharged the Rule to shew Cause.

*Rocks versus Atease, ex Dimiss' Dom. Briscoe vid. & al.**Cooke.*

Motion to
bring Money
into Court on
an Ejectment
brought for
Nonpayment
of a Fine to
the Lord of
the Manor,
but denied.
*Ante Ann.
Page 6. and
vide Stat. 4
Geo. II. c. 28.*

A Motion to bring 100 l. into Court, the Defendant suggesting that the Ejectment was brought for Nonpayment of a Fine, and for letting a Lease contrary to the Custom of the Manor; and therefore he proposed to bring in the 100 l. to answer the Fine, and that the Lessor of the Plaintiff should proceed at his peril for the Forfeiture in respect to the Lease supposed to be let contrary to the Custom of the Manor, but the Court denied the Motion; for tho' it can be no Disadvantage to a Lessor to stay Proceedings on Payment of his Rent and Costs: Yet the granting this Motion may probably give the Defendant such an Advantage over the Lessors, who have brought this Ejectment for a just Cause, as may do them Injustice.

Hil. 1 Geo. II.

Holdfast versus Carlton.

Foley.

A Motion was made the last Day of the Term to plead Ancient Demesne, but denied because it was not moved within the Time limited to plead in Abatement, viz. within four Days after Declaration delivered or left in the Office.

Plea of Ancient Demesne denied because too late to plead to the jurisdiction of the Court. See post. *Smith v. Roe*, Trin. 1734. *Biddleston v. Aberley*, East. 4 Geo. II.

Turner versus Bayly.

Cooke.

A Motion to set aside a Judgment obtained upon an Assignment of the Bail-bond. The Defendant insisted that such Action could not be maintained, because the Bail-bond was taken for more than double the Sum the Plaintiff had sworn due. The Court seemed to be of Opinion, that if the Judgment was regular, the Point about taking more than double the Sum on the Bail-bond could not come in question; but that this Case might be settled, the Court put it off till next Term, it being a new Point on the Act of 12 Geo. I. cap. 29. but the Parties having agreed, the Point was not then settled.

Bail-bond taken for more than double the Sum sworn due.

Note; It seemed to be agreed that the Bail-bond may be taken in double the Sum sworn due.

May versus Constable.

Cooke

Easter, 1 Geo. II. 1728.

UPON justifying of Bail, M^r. Mould one of the entering Clerks of this Court offered to be Bail; it was objected that he is within the Meaning of the Rule of Mich. 1654. sect. 1. which says no Attorney shall be Bail in any Action; the Court said that the old Rule must be taken literally, therefore M^r. Mould was allowed to be Bail, but all declared that the Rule should for the future extend to all entering Clerks.

No entering Clerk to be Bail. *Reg. Cur. Mich. 1654. sect. 1. v. Fuller*, East. 4 Geo. II. See *reg. Mich. 6 Geo. II.*

Wicking

Eaft. 1 Geo. II.

*Wicking & al' verſus Cockſedge.**Borret.*

Bail filed with
the Filazer of
a wrong
County is no
Bail.

A Motion to ſtay Proceedings on the Bail-bond; the Caſe was, One Hall being Defendant in the Original Action was arreſted on a Teſtatum Capias into Suffolk out of London, and by Miſtake the Bail was taken and filed with the Filazer of Suffolk, but ſhould have been filed with the Filazer of London; the Court held the Proceedings on the Bail-bond regular, and would not ſtay them, but upon Payment of Coſts, and the Defendant's giving the Plaintiff Judgment on the Bond to the Sheriff, to ſtand as a Security for the Plaintiff's Debt, and the Original Defendant's accepting a Declaration, and pleading thereto and taking Notice of Trial after Term; but the Defendant not conſenting to theſe Terms no Rule was made.

*The Dutch Eaſt India Company verſus Henriques & al'.**Borret.*

To amend a
Warrant of
Attorney by
making it
Debt inſtead
of Caſe.

A Motion to amend the Warrant of Attorney filed, by making it Debt inſtead of Caſe; upon hearing Counsel on both Sides, and citing many Caſes, the Court ordered it to be amended; and if the adverſe Party does not proceed in Error, Coſts to be paid him.

*Watkinſon againſt Swyer and others.**Foley.*

Coſts taxed in
Trefpaſs, Da-
mages 3 s. 4 d.
Coſts 40 s.
no Certificate;
the 40 s. gi-
ven is the Act
of the Jury;
the Prothono-
tary can ſign
no other
Judgment.

A Motion for Judgment upon Nul tiel Record, in an Action brought upon a Judgment; the Original Action was (a) Trefpaſs, and 3 s. 4 d. Damages given by the Jury, and they alſo gave 40 s. Coſts, and 6 s. 8 d. the Capiatur Fine was allowed by the Prothonotary, in all 50 s. It was inſiſted by Mr. Serjeant Chapple that the Judgment was erroneous

2

(a) Where an Action of Trefpaſs is brought in any inferior Court, there the Plaintiff will have his Coſts, for *Stat. 43 Elix. c. 6. 22 & 23 Car. II. c. 9. 8 & 9 W. III. c. 10.* which give no more Coſts than Damages in Actions of Trefpaſs, do not extend to inferior Courts; and tho' the Defendant remove the Cauſe, and a Verdict be given above for the Plaintiff, and Damages under 40 s. yet the Plaintiff ſhall have his full Coſts, becauſe he had made his Election in the inferior Court where he would have had Coſts; and the Defendant ſhall not reap ſuch an Advantage by removing the Cauſe.

roneous, because the Jury had allowed more Costs than Damages; but the Court over-ruled his Objection, for the Jury are not bound by the Statute, and the Prothonotary must sign Judgment according to the Verdict; and as to the Capiatur Fine, the Prothonotary is directed by the Stat. 5 & 6 W. & M. c. 12. to allow it to the Plaintiff in Increase of Costs. He then insisted on a Variance between the Issue delivered and the Record, as to one of the Defendants Name, viz. Eusterce in the Issue, and Curtels in the Record, which the Court held to be a material Variance; and therefore a Rule was made for Judgment for the Defendant, unless Cause shewn to the contrary on Monday next, which was afterwards made absolute on the Secondary's Certificate that no Cause was shewn.

East. 1 Geo. II.

Stat. 22 & 23 Car. II. cap. 9. 1 Salk. 207.

Post. Eggleston v. Newman, Hil. 1732. Thomlinson v. White, East. 1735.

Williams versus French.

Cooke.

Trin. 2 Geo. II. 1728.

IN Easter Term a Motion was made to put off a Trial to Michaelmas Term, but denied as a Thing never done, for with the same Reason it may be put off for ten Terms, and at that Rate the Plaintiff might be delayed for ever; but on shewing a Precedent in a Cause between Dighton and Ellis, Mich. 12 Geo. I. *Borret*, where a Trial was respited from Michaelmas to Easter Term, and on the Serjeant's urging the Necessity of the Case, the Court granted a Rule to shew Cause this Term, why the Trial should not be respited till Michaelmas Term, and now a Rule was granted accordingly to respite the Trial till Michaelmas Term, but at the Peril of paying Costs, if the Defendant then desired further Time.

Trial not respited above one Term.

Post. Stafford v. Marshal, East. 1735.

Randolph versus Reginder.

Foley.

A Motion to set aside an Inquisition, because the Jury had given more for Interest than was due, viz. the Note was given for Payment of Money a Month after Date, and the Jury gave Interest from the Date, and until the Execution of the Inquiry, whereas Interest ought only to be given from the Expiration of the Month to the Commencement of the Suit. The Court denied the Motion, but or-

To set aside an Inquiry because the Jury had given more Interest than was due. Ante 42.

N

dered

Trin. 2 Geo. II.  dered the Plaintiff (he consenting thereto) to remit so much as was taken more than ought to have been allowed.

Note ; *Pumville* versus *Willet*, *Mich.* 1733. *Borret*, the like Rule was made by the Court.

Smith versus *Dobby*.

In Assault &c. *Foley*.
brought into
Court.

Taney v.

Clarke, *Mich.*

4 *Geo.* II.

Spring v. *Bil-*

son, *Hil.* 6

Geo. II.

AN Action of Assault and for taking away &c. Moved to bring the Shilling into Court, and Plaintiff to proceed at his Peril for the Residue; and a Rule made to shew Cause; but Quære, Whether it was ever made absolute, or opposed?

Harris versus *Allen*.

Foley.

Action for the
mesne Profits
pending a
Writ of Er-
ror.

AN Action of Trespass for the mean Profits, brought pending a Writ of Error on the Judgment; it was moved by the Defendant that Proceedings might be staid; the Court said this Case was within the Reason of the Rule which is constantly granted where an Action of Debt is brought on a Judgment, pending a Writ of Error, and therefore made a Rule that the Plaintiff might proceed to ascertain his Damages, and to sign his Judgment, but that Execution thereon should be staid till the Writ of Error on the Judgment was determined.

Sedgwick & al versus *Richardson*.

Cooke.

Accepting of
Issue waives
the Form of
a Replication
and Rule.
Post. Fox v.
Leaving, East.
1730.

MOTION to set aside a Judgment, because the Plaintiff had not delivered a Replication in Form, and given a Rule to rejoin; but it appearing that the Defendant's Attorney had agreed to take the Issue as delivered, the Court held he thereby waived the Form of the Replication and Rule, and therefore they discharged the Rule which had been granted to shew Cause.

Trin. 2 Geo. II.
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*Jones versus Merriden.*

*Foley*

**U**PON a Motion to set aside a Judgment, both Plaintiff and Defendant having entered an Appearance for the Defendant, the Court declared that the Plaintiff might enter the Appearance for the Defendant the Day after the Appearance Day of the Return of the Writ; the Defendant did not enter his Appearance till the Day after that Day, and therefore the Plaintiff's Judgment was held regular.

*Note;* In *Easter Term 2 Geo. II. Cooke*, the same Point came in Question in a Cause *Bannister versus Swinburne*, and was determined accordingly.

Plaintiff entering the Defendant's Appearance the Day after the Appearance Day; is regular.  
*Stat. 12 Geo. I. c. 29.*  
but now see *Charlton v. Hankey, Mich. 1733. & Stat. 5 Geo. II. c. 27.*

*Higginson vid. versus Umfreville.*

**M**R. Baron Comyns attended and produced the Red-Book of the Exchequer, and by Virtue of a Clause therein demanded the Privilege of that Court for the Defendant, as being one of the Clerks of Mr. Pearce an Attorney of that Court; a Rule to shew Cause had been granted, but no Cause being now shewn, Mr. Serjeant Hawkins cited many Cases for the Defendant, as did also the two Justices then in Court, viz. Price and Denton; the Rule was made absolute and Privilege allowed.

The Privilege of a Clerk in the Exchequer allowed.  
*Ante 2.*  
*22 H. 6. 19b.*  
*Brooks Abr. 29.*  
*Lutwich 46.*  
*Rafal 475.*  
*&c.*  
*2 Bul. 36.*  
*2 Salk. 546.*

*Walker & al' versus Packer.*

*Cooke.*

**A** Motion for Costs against a Pauper for not proceeding to Trial, and on Debate the Court ordered Costs to be taxed, and declared that a Pauper should pay Costs for all Defaults, as an Executor or Administrator should for their own Defaults.

Costs against a Pauper for not proceeding to Trial.  
*Ante 14, 15.*

*Tames*

*Mic. 2 Geo. II.**Tames versus Gossey.**Cooke.**Mich. 2 Geo. II. 1728.*

No Demur-  
to Part where  
there is a  
Tender of  
Money into  
Court.

Double Plea  
denied.

ON a Motion for Liberty to tender Money into Court, upon some of the Promises in the Declaration, and to Demur to one of Promises, a Rule Nisi was granted; but on hearing Counsel on both Sides, the Court declared, that a Tender of Money was in order to make an End of the Cause, and not to delay it, and therefore discharged the Rule to shew Cause.

*Coant versus Keate.**Cooke.*

No Impar-  
lance, tho'  
Plaintiff de-  
clared on se-  
veral Batta-  
ries, tho' but  
one in the  
Writ.

A Motion for Imparlance in Battery, because the Special Writ mentioned but one Battery, and several Batteries were set forth in the Declaration; but denied, because the Special Writ in Battery never mentions but one Battery; and so it is in Covenant, tho' many Breaches are assigned in the Declaration.

Mr. Serjeant Baynes for the Defendant; Whitaker for the Plaintiff.

*Gerry versus Shilston.**Cooke.*

Countermand  
in London of  
a Devonshire  
Cause held  
good.  
Post. Good-  
right v. Hob-  
lyn, Trin. 8  
& 9 Geo. II.

IN an Action laid in the County of Devon, a Rule was granted for Costs for not going to Trial, upon an Affidavit that Notice of Trial had been given but no Countermand served; the Plaintiff produced an Affidavit that Notice had been countermanded in due Time in London; and on Debate, this was held good, tho' it was urged on the Defendant's behalf, that the Directions for a Countermand must come from the Country, and ought most properly to be given there; and that the allowing Countermands to be served in London gave an Opportunity to Plaintiffs to exercise the most notorious Perjuries; for by the Defendant's Affidavit it appeared that the Plaintiff, both before and after the Beginning of the Assizes for the County of Devon, frequently told the Defendant that he intended to proceed to Trial; and notwithstanding it was impossible for the Defendant to receive timely Notice of the Countermand

in Devonshire, so as to prevent his Witnesses going to the Assizes, yet the Court were of Opinion that the Countermand given in Cotton was good, and that any Proceeding to Trial afterwards would have been discharged. *Mic. 2 Geo. II.*

And so it was said to have been settled in a Cause last in Yorkshire, between Shipley and Sweeting, Trin. 13 Geo. I. *Foley.*

*Barker versus Hartley, vid'.*

*Cooke*

**A** Motion to set aside a Judgment signed for want of a Plea; a Plea had been left in the Office, in the Body of which the Plaintiff's Christian Name was mistaken, by putting Ed'rus for Ed'us, for which Mistake the Judgment was signed; but the Court, on hearing Counsel on both Sides, declared that tho' the Christian Name was mistaken, it was a Plea in the Cause, and therefore set aside the Judgment, and said the Plaintiff might think it was well he escaped without paying of Costs.

A Judgment set aside, tho' the Christian Name of the Plaintiff was mistaken in the Plea and the Plea in the Office.

*Note;* This was a Plea of *Plene Administravit*, and it was insisted that if that Part of the Plea, wherein the Plaintiff's Christian Name was mistaken, had been left out, it would notwithstanding have been a good Plea; so that the naming the Plaintiff there was immaterial; but the Plaintiff's Name was again mistaken in a material Part, altho' of that no Notice was taken.

*Parke versus Davis.*

*Foley.*

**A**N Action of Trespass for breaking a Water-pale, a Verdict for the Plaintiff and 1 s. Damage; the Question was, Whether the Plaintiff should have his full Costs? The Court held, that this being an Injury to the Plaintiff's Personal Property, is not an Action within the Statute; and there is no Occasion for the Judge to certify, for no Freehold could come in Question; and it was said this Point had been often so ruled both here and in the King's Bench and Exchequer.

Costs in an Action of Trespass, Damages 1 s. *Stat. 22 & 23 Car. II. c. 9. Post. Carruthers v. Lamb, Mich. 1734. Tomlinson v. White, East. 1730. Rofiter v. Belling. Ant. 24.*

*Note;* *Blackboyne versus Packer*, Trin. 2 Geo. II. in an Action for killing a Goose, it was ruled accordingly, and full Costs allowed.

O

*Morris*

Mic. 2 Geo. II.

*Morris versus Parry.**Foley.*

Where the Appearance is entered by the Plaintiff for the Defendant, Notice of the Declaration may be given to the Defendant himself.

(a) By the Rule of Court Mich. 1 Geo. II. the Declaration should have been left in the Office, and Notice thereof given to the Defendant.

Post. Thomas v. Bussell,

**A** Motion to set aside Judgment, upon Affidavit that the Plaintiff, tho' he knew the Defendant's Attorney, had delivered the Declaration, and also a Notice thereof, to the Defendant himself; but it appeared that the Plaintiff, did not know the Defendant's Attorney, till after the Plaintiff had entered an Appearance for the Defendant; the Court were of Opinion, that the Plaintiff was not obliged to give any further Notice besides what had been given to the Party, and so the Judgment was confirmed; and tho' it appeared that the Plaintiff did not exactly pursue the (a) Rule of this Court, but delivered a Copy of the Declaration with Notice thereof to the Defendant, yet the Court said that the Delivery of the Declaration to the Defendant, and at the same Time giving him Notice thereof, was a complying with the Rule of Court in an Equitable Construction.

Note; *Canter versus Fockham*, Hil. 5 Geo. II. *Foley*, and *Sbrigley versus Matber*, Mich. 1733. in the like Cases, the Court ruled this Point accordingly.

Hil. 6 Geo. II. *Hutching v. Lillyman*, Hil. 9 Geo. II.

*Harding versus Avery.**Foley.*

Judgment signed after Return of Writ of Error held good. *Duffield v. Warden, East.* 5 Geo. II. *Griffin v. King, Trin.* 2 & 3 Geo. II. 1 Sid. 318. 3 Keb. 309. (a) The Judgment when signed, hath relation to the Day in Bank; so that a Writ of Error returnable after in the same Term, would have removed the Record. 1 Mod. 212.

**A** Rule to shew Cause why a Ca' Sa' should not be discharged, and the Defendant set at Liberty, the Plaintiff having taken out Execution after a Writ of Error allowed. It appeared that the Plaintiff did not sign his Judgment till after the Return (a) of the Writ of Error; the Court, on hearing Counsel on both Sides, and the Matter fully debated, and many Cases cited, declared that the Plaintiff might sign his Judgment when he pleased; and if he thought fit to defer signing it till after the Return of the Writ of Error, he had Liberty to do so, and might then take out Execution, notwithstanding the Writ of Error, in regard the Writ of Error, if returnable before Judgment signed, does not attach upon the Suit; and therefore the Court discharged the Rule to shew Cause.

Note; *Chivers versus Willan*, Trin. 3 & 4 Geo. II. *Cooke*, in the same Point, the Court determined accordingly.

*Spencer*

*Spencer versus Le Royd.*

*Borret.*

**A** Motion made the last Day of the Term for an Attachment for Non-payment of Costs, which the Court granted, but declared it was the settled Practice of the Court, that in no other Case a Motion could be made for an Attachment the last Day of any Term.

Rule for an Attachment made the last Day of the Term.

*Richardson versus Sutton.*

*Foley.*

Hil. 2 Geo. II. 1728.

**A** Motion to set aside a Demurrer to a Declaration, where a Plea in Abatement had been pleaded to the Declaration, and that Plea demurred to; yet Mr. Serjeant—had demurred to the Declaration, and to the Demurrer before pleaded to the Plea in Abatement; the Court resenting this Behaviour in the Serjeant, ordered the Att against False Pleading to be read, made a Rule to set aside the Demurrer, and ordered the Serjeant to pay the Costs of the Motion.

False Plea set aside, and a Serjeant ordered to pay Costs.

Stat. 3 E. I. c. 29.

*The King versus Gibbon.*

**O**N an Attachment for a Contempt, it was moved to estreat the Recognizance, because the Defendant had not appeared to answer Interrogatories. For the Defendant it was alledged, that the Interrogatories had not been filed in due Time for his Examination; the Court declared that the Defendant ought to have moved to be discharged, if Interrogatories were not filed in four Days according to the Rule; but he not having applied for that Purpose, the Court ordered that he should answer the Interrogatories in a Week, or the Recognizance should be estreated.

On Attachment Defendant may move to be discharged, if Interrogatories be not filed.

*Griffith*



*Eaft. 2 Geo. II.**Griffith verſus Berney & ux'.*

Eaſter, 2 Geo. II. 1729.

A married  
Woman ren-  
dered with  
her Husband  
in Diſcharge  
of Bail.

**I**T was moved to Diſcharge the Defendant's Wife after a Render in Diſcharge of Bail; Mr. Serjeant Comyns for the Defendants cited many Caſes; Mr. Serjeant Eyre for the Plaintiff inſiſted, that the very Recognizance itſelf imported, that if the Defendants ſhould be condemned, the Bail ſhould pay the Condemnation Money, or render the Bodies to the Fleet, ſo that the Defendants being continued in Cuſtody, was agreeable to the Recognizance and the Defendants own Conſent. On the Debate, the Court ſeemed to be of Opinion, that a married Woman might be taken with her Husband on meſne Proceſs, if the Debt was contracted dum ſola, that the Render in this Caſe was good, and that the Defendant's Wife could not be diſcharged; for if it was otherwiſe, a Woman in Cuſtody, or that was indebted, might marry a Priſoner, and then if this Practice took Effect, ſhe would be intitled to a Diſcharge, and her Creditors might be defrauded; ſed Advifari.

*Note*; This Matter was afterwards compromiſed, and the Defendant and his Wife were both diſcharged on bringing Money into Court.

*Walter verſus Okeden.**Cooke.*

A Fine amended.

Ante 9, 17,  
25, 26, 30.  
Poſt. *Fofter v.*  
*Pollington &*  
*ux', Trin. 8*  
*& 9 Geo. II.*

**A** Motion was made laſt Term to amend a Fine, by inſerting the Word Woorth, and this preſent Term on ſhewing Cauſe, the Rule was made abſolute for the Amendment, tho' it was objected that the Heirs at Law would be prejudiced, if the Fine was amended; the Court ſaid they could not take Notice whether it would be a Prejudice to the Heirs at Law or not, but it was the Duty of the Court to make the Fine agreeable to the Deed and Intention of the Parties. Mr. Serjeant Belfield pro Quer'; Cheſhire & al' pro Hared'.

*Dalton versus Teasdale.*

*Foley.*

**A** Capias issued into York, a Testatum Capias into Middlesex, and a Scire facias against Bail in York, and Judgment thereon, and Testatum Execution in Middlesex; and now the Court was moved to set aside the Judgment, because the Scire facias against Bail ought to be where the Bail or Recognizance is entered on Record; and in this Case the Scire facias issued into York, whereas it ought to have issued into Middlesex, the Bail being recorded at Westminster: Sed Cur' Advisare.

Motion to set aside a Judgment on a Scire facias against Bail in York, the Original Action being brought there, but the Bail recorded at Westminster. Ante Cock v. Green, Mich. 13 Geo. I.

*Harvey versus Weston.*

*Foley.*

**A** Motion to set aside a Non-pros signed in Mr. Foley's Office for want of a Declaration; it appeared that the Plaintiff's Attorney practised in Mr. Prothonotary Cook's Office, and therefore the Rule and Non-pros ought to be in that Office; and on hearing Counsel on both Sides, the Non-pros was set aside. Sed quære; for since the Defendant's Attorney must call on the Plaintiff's Attorney for a Declaration in Writing before he can sign a Non-pros, it seems indifferent in what Office the Rule is given; and the generally received Opinion is, that it may be given in any Office; and so likewise the Practice now seems to be.

Non-pros set aside, because signed in a wrong Office.

*Vanderegh & al' versus Waylet.*

Trin. 2 & 3 Geo. II. 1729.

**A** Motion to set aside a Render made after the Rising of the Court; it was declared to be the Opinion of this Court and of the Court of King's Bench, and settled as Law, that no Render was good unless made before the Rising of the Court on the Appearance Day of the Scire facias returned Scire feci, or of the second Scire facias returned Nihil; and so all Arrests made, and Process served, after the Rising of the Court on the Return Day, are irregular.

Render after rising of the Court void. Regula Mich. 1654. sec. 12. See Ante Wright v. Duxon, 18. Wright v. Dingley, 23. Post. Guvinnat v. Proctor, 58. Knight v. Winter, Mich. 1735. Ling v. Woodjer, Hil. 1735.

*Trin. 2 & 3 Geo. II.* Note; *Bacon* versus *Bruce*, *Trin. 7 & 8 Geo. II. Thomson*, it was likewise held, that a Render after the Rising of the Court upon the last Day allowed for rendering the Defendant, was void.

### *Griffin* versus *King*.

*Cooke.*

Execution set aside, tho' the Judgment was signed after the Writ of Error expired.

*Ante Harding v. Avery, Mich. 2 Geo. II. Post. Duffield v. Warden, East. 5 Geo. II.*

A Motion to set aside an Execution which was executed after a Writ of Error allowed; the Case was, The Defendant had confessed a Judgment by Cognovit Dampna, and the Plaintiff's Attorney promised to sign it the 31st of May, which was the Day before the Escoin-Day of this Term; but the Plaintiff's Attorney deferred signing his Judgment till after the Return of the Writ of Error was expired, and then took out his Execution; which the Court said would have been regular, if he had not consented to sign Judgment at the Time abovementioned; but seeing he had acted this Part contrary to his own Agreement, they ordered the Execution to be set aside, and Restitution made, and likewise ordered the Plaintiff's Attorney to sue out a new Writ of Error at his own Costs.

### *Rathbone* versus *Stedman*.

Money in Court, and Verdict for Defendant.

*Post. Maddox v. Pafion, East. 8 Geo. II.*

*Ante Anon. 5. Lane v. Wilkinson, Trin. 13 Geo. I.*

*Borret.*

Sixty-three Shillings being brought into Court, upon the Common Rule, and Verdict for the Defendant, upon Motion in the Treasury, and hearing the Attornies on both Sides, it was ordered that the Defendant should have the Money out of Court in Part of his Costs.

### *Broome* versus *Woodward and others*.

*Cooke.*

*Mich. 3 Geo. II. 1729.*

Judgment set aside because the Plaintiff did not stay till the opening of the Office the Afternoon after the Rule was out.

A Motion to set aside a Judgment signed the next Morning after the Rule to plead was out, the Plea was called for in Writing two Days before the Rule was out; the Court said the Plaintiff's Attorney might call for a Plea instantly upon the Rule being given; but it is the standing Rule of the Court not to sign Judgment, or Non-pros, till the

the opening of the Office in the Afternoon after the Rule to plead is out, and for that Reason they set the Judgment aside. *Mic. 3 Geo. II. Buckmaster & Troughton, 17. Hems v. Chapman, Mich. 5 Geo. II.*

*Joy versus Francia.*

*Cooke.*

**A** Motion to set aside a Judgment, because the Plaintiff's Attorney did not give the Defendant's Attorney Notice of the Declaration, nor call on him for a Plea; but the Court held that the Judgment was good, for where the Plaintiff enters the Declaration *de bene esse*, he cannot know the Defendant's Attorney, till Bail put in or Appearance entered; and Notice to the Defendant of the Declaration and of the Time of Pleading, is sufficient.

Note; *Peed versus Chamberlain, Mich. 6 Geo. II. Cooke,* the Court made the like Determination in Regard to this Point.

Judgment good where Declaration is filed *de bene esse*; Notice thereof given to the Defendant, without calling on the Defendant's Attorney for a Plea. *Vide Stat. 12 Geo. I. c. 29. Reg. Mich. 3 Geo. II. reg. 2. Ante Turner v. Shrimpton, 32.*

*Busby versus Walker.*

*Foley.*

**U**PON a Motion to stay Proceedings on the Bail-Bond, the Court declared it should be a standing Rule of Practice, that in all Cases of Exception to Bail, such Exception should be made either in the Filazer's Book, or on the Bail-piece with the Commissioner, before it is transmitted, and afterwards above in the Filazer's Book, or on the Bail-piece.

Exceptions against Bail to be either on the Bail-piece or the Book. *Ante Rayner v. Stamp, Hil. 13 Geo. I.*

*Taylor versus Blaxland & al' Repleg'.*

*Foley.*

**T**HE Court was of Opinion that Notice ought to be given in Replevin of the filing the *Re. fa. lo.* if brought in after the four Days, and that a Declaration ought to be called for in Writing, and therefore set aside the Return 'Habend', which had been issued in this Cause without such Notice.

Note; *Coleman versus Poynter, Easter, 4 Geo. II. Foley,* the like Resolution by the Court.

Notice of filing the *Re. fa. lo.* if brought in after the four Days.

Hil. 3 Geo. II.

*Breedon versus Hope.**Borret.*

Hil. 3 Geo. II. 1729.

No Impar-  
lance on a  
Declaration  
delivered on  
the second  
Return of  
Hilary Term.  
(a) *Reg. Mich.*  
3 Geo. II.  
and see *Reg.*  
*Pass. 3 Geo.*  
II.

Lond. H. **I**N this Case, the Writ was returnable the second Return of this Term, Declaration delivered de bene esse upon the Effoin-Day of the Return being in full Term, and a Rule to plead given. Upon a Motion in the Treasury for an Imparlance it was denied, because the Declaration was delivered according to the (a) last Rule for pleading in four Days.

*Fox & al' versus Lewing.*

East. 3 Geo. II. 1730.

Motion to stay  
Judgment up-  
on Nul tiel  
Record with-  
out Rejoinder  
in Form, de-  
nied.

Ante *Sedg-  
wick v. Ri-  
chardson, Trin.*  
2 Geo. II.

*Lutwich*  
1514.  
*Brownlow*  
433.  
*Dyer* 228.  
*pl.* 45.

**U**PON a Motion to stay Judgment after a Replication of Nul tiel Record, the Plaintiff insisted that Judgment ought not to be given for that there had not been a Rejoinder in Form, quod habetur tale Recordum; Mr. Serjeant Hawkins said it might possibly be the Practice of the King's Bench, to give Judgment without such Rejoinder, but insisted that it was not the Method or Practice of this Court: The Chief Justice declared he thought it reasonable to give Judgment upon such a Replication without any Rejoinder, whatever the Practice might be; and the Rule was enlarged till next Term to have this Point settled. And it was then insisted to have been the constant Practice of this Court to add a Rejoinder, and that it was no compleat Issue without it; but the Court were of another Opinion, and declared that the Issue was compleat without any Rejoinder.

Note; *Newberry versus Sedgwick, Easter 1736. Thompson,* in the like Case the Court determined agreeably to the above Resolution.

*Trin. 3 Geo. II.*

*Cole versus Pinnell.*

*Foley.*

*Trin. 3 Geo. II. 1730.*

**A** Motion for an Imparance till Michaelmas Term next, because the Declaration was delivered last Michaelmas Term, and no Plea called for in three Terms, according to the Rule Mich. 1654. which was ordered by the Court accordingly.

*Li. b. because no Plea called for in three Terms. Reg. Mich. 1654. sec. 15.*

*Thompson versus Smith, ex dimiss. Samuel Warner, Esq;*

*Cooke.*

**I**N Ejectment, a Rule to shew Cause why Proceedings should not stay till the Lessor, being Lord of the Manor, should deliver the Defendant a Copy of the Court-Roll of his Admission to the Copyhold Lands of Inheritance in Question, which was detained for Nonpayment of the Fine. The Court were of Opinion, that the Defendant had a Right to the Admission, and might not be able to defend himself without it, and therefore the Lessor ought to deliver it, he having another Remedy for his Fine, for the Lands will be forfeited for Nonpayment thereof.

*Proceedings stayed till the Lord of the Manor delivered the Defendant Admission.*

*Sabor versus Pott.*

*Borret.*

**O**N a Motion for Time to plead, the Court refused to grant Time, but on Terms that the Defendant should consent not to move the Court to change the Venue.

*Time to plead denied, unless Consent not to move to change the Venue. See the next Case and the Cases there cited.*

*Treasure versus Wright.*

*Cooke.*

*Mich. 4 Geo. II. 1730.*

**O**N a Motion for Time to plead, it being represented on the Behalf of the Plaintiff, that the Defendant intended to move to change the Venue, which would be a great Delay to the Plaintiff; the Court said they would not encourage Motions to change the Venue after Time to plead

*See the preceding Case, and Carter & Dormer, Hil. 13 Geo. I. Post. Costar v. Standen, Hil. 8 Geo. II. Ball v. Young, Hil. 9 Geo. II. But see also Lucas v. Rudd, had Mic. 10 Geo. II.*

*Mic. 4 Geo. II.* had been given, and therefore would not give Time to plead, unless the Defendant would consent not to move to change the Venue.

*Griffith, Administrator of Griffith, versus Squire.*

*Cooke.*

*Comb. 348.*  
*Ante Clarke*  
*v. Godfrey, 27.*  
*Post. Marsh*  
*v. Carter,*  
*Mic. 8 Geo. II.* A Motion was made to tax the Intestate's Bill of Costs, the Action being brought for Fees and Charges due to the Intestate, who was an Attorney; but the Motion was denied, and it was likewise held that the Administrator of an Attorney might commence a Suit without delivering any Bill.

And Note; *Lee, Executor*, against *Knight*, *Mich. 6 Geo. II.* *Cooke*, the like Motion was made and denied.

*Holmes versus Small, and in three other Causes.*

*Cooke.*

*Concerning*  
*Declaring by*  
*the By.*  
*Ante Me-*  
*ibain v.*  
*Pople, 6.* A Motion to set aside the Proceedings, because it was alleged the Declarations were delivered as Declarations by the By, and for that they ought not to declare by the By, till the Plaintiff had declared in the Original Action. Cur: If the Writ had been Special it must have been so; but here the Writ is an Acetiam only, and so the Plaintiffs by declaring will only lose the Bail, but may declare in any Action or any County, as they might upon a Clausum fregit, and deliver as many Declarations the same Term between the same Parties as they will.

*Gwinnell versus Procter.*

*Foley.*

*Render not*  
*good till Bail*  
*be perfected.*  
*Post. Ling v.*  
*Woodyer, Hil.*  
*9 Geo. II.*  
*Vandereft v.*  
*W'aylt, 53.* A Motion to discharge Mr. Justice Price's Summons to stay Proceedings on a Bail-Bond, on a Suggestion that the Defendant had surrendered himself in Discharge of his Bail; it appeared that Exception was taken to the Bail, and that the Render was made before Justification, so that the same was irregular, and did not warrant the Suggestion in the Summons; wherefore the Court set the same aside.

I

Note;

Note ; *Cremar* against *Bulman*, *Hil.* 8 *Geo.* II. the same *Mic.* 4 *Geo.* II.  
Point was resolved accordingly by the Court.

*Tuney versus Clarke.*

*Cooke.*

**I**N Trover, the Defendant moved to bring a Note into Court ; Mr. Serjeant Darnell declared he had moved for and obtained a Rule, to bring into Court two Fowls in one Term, and the next Term a Spare-rib of Pork or Money in lieu thereof ; Mr. Secondary Thomson remembred a Motion to bring in a Belt in Trover, and several other Instances were given : The Court thought it as reasonable that Goods, or their Value, should be brought into Court in an Action of Trover, as Money in an Assumpsit, and made a Rule accordingly.

Tender of a Note into Court upon an Action of Trover.  
*Smith v. Dobby*, *Trin.* 2 *Geo.* II.  
*Spring v. Billson*, *Hil.* 6 *Geo.* II.

Note ; *Billings* against *Wilcocks*, *Hil.* 1733. *Cooke*, a Rule was granted for bringing Work-Tools into Court.

*Poulter versus Skynner.*

*Foley.*

**U**PON a Motion to set aside a Judgment, it appeared that the Defendant was served with Process in London, at which Time he lodged in London ; and Notice of a Declaration being filed against him was likewise left at his Lodging in London, as his last Place of Abode, with Directions therein to plead within four Days, tho' his most usual Place of Abode was at Dorchester where he had a house, which being twenty Miles from London, it was insisted upon that he should have had eight Days Time to plead by the (a) Rules of the Court ; and also that the Notice should have been left at the Defendant's House in the Country, he only being in London for a short Time upon Business ; but the Court held that the Process having been served upon the Defendant in London, and the Notice of the Declaration delivered in London while he resided there, such Delivery was sufficient, and that the Defendant had only four Days Time to plead.

Judgment good, tho' the Defendant's most usual Abode was above 20 Miles from London, Process being served and Notice of the Declaration given at his Lodgings in London.  
(a) *Mich.* 1 *Geo.* II.  
*Mic.* 3 *Geo.* II.  
*3 East.* 3 *Geo.* II.  
*Post. Whitehead v. Goodyer*, *East.* 5 *Geo.* II.

*Duell*



*Mic. 4 Geo. II.**Duell qui tam versus Stow.**Cooke.*

Costs tho' Ne  
recipiatur en-  
tered.

*Reg. Cur' Pas.*

*1 Jac. II.*

*Hil. 8 Geo. I.*

*reg. 2.*

**U**PON a Question whether Costs should be allowed to the Defendant, on account of the Plaintiff's not proceeding to Trial in Middlesex; it appeared the Defendant had entered a Ne recipiatur the Evening next but one before the Day of Sitting; and it was therefore insisted that the Plaintiff was not to pay any Costs, since the Defendant himself by entering the Ne recipiatur was the Occasion why the Cause was not tried; but per Cur' the Default was in the Plaintiff's not entering his Cause in due Time, and therefore he shall pay Costs notwithstanding the Ne recipiatur entered by the Defendant.

*Garden versus Sheers, an Attorney.**Cooke.*

The Defen-  
dant, an At-  
torney, moved  
to be dis-  
charged out  
of Execution,  
being taken  
as he was go-  
ing to attend  
the Court, but  
denied.

*Post. Griffith*

*v. Brown,*

*Newman &*

**A** Motion to discharge the Defendant upon an Affidavit, that he (as an Attorney) was going to Westminster to attend justifying Bail, and had given Notice to the Plaintiff's Attorney and Filazer to attend; but this did not appear plainly; and therefore, tho' the Court will protect any Person Eundo & Redeundo, yet they will not regard every Pretence.

*East. 4 Geo. II. Morley v. Grub, Trin. 7 & 8 Geo. II. Piggot v. Charkwood, Trin. 1734.*

*Harrison, East. 10 Geo. II.*

*Ellison versus Kirby.**Foley.*

Bill not signed  
not liable to  
be sued for,  
or taxed.

*Ante 27.*

*Griffith v.*

*Squire, 58.*

**A** Motion and Rule made to tax the Plaintiff's Bill of Costs, which was taxed Ex parte after several Attendances; but at last it appearing to the Court that the Plaintiff had not signed his Bill, the Court declared that a Bill not signed was not to be taxed by Virtue of the late Act of 2 Geo. II. cap. 23. for the Regulation of Attornies and Solicitors, and discharged the Rule and the Proceedings which had been had thereon.

*Hayes versus Longbotham.*

**A** Motion that the Plaintiff should reverse an Outlawry at his own Expence, for that the Defendant being visible, and daily to be arrested or served with Process, (of which Affidavits were made,) and living in London was outlawed there; the Motion was after great Debate denied: But the Court said, if the Defendant had been outlawed in another County, they would have ordered the Plaintiff to reverse the Outlawry and pay Costs: Sed Quare; for the Writ of Proclamation, which by the Stat. 31 El. c. 3. must be awarded to the Sheriff of the County where the Defendant dwelt at the Time of the Exigent, was intended to remedy any Surprize of this Sort upon the Defendant. Mr. Serjeant Corbet cited several Cases in the King's Bench, where Persons being outlawed, tho' in the same County, yet it appearing that they were visible, and easy to be arrested or served with Process, the Plaintiffs were ordered to pay Costs and reverse the Outlawry at their own Expence.

Outlawry in the same County held good. *Post. Norton v. Gilbert, Mich. 1732. Hains v. Bowler, East. 13 Geo. I. Banco Regis, & Lamphere v. Wyersdale, in the same Court. Calvert & al v. Burnford, Mich. 9 Geo. I. Cooke.*

*Hamly versus Dowharty.*

*Borret.*

**I**T was declared by the Court to have been the constant Practice, that no Exception could be taken to the Bail which had been taken by the Sheriff, but the Plaintiff may proceed against the Sheriff to make him return his Writ and bring in the Body, and the Court will then compel the Sheriff to put in good Bail, as they did Mr. Benson in the Case of *Hampson versus Sower*, East. 2 Geo. II. *Foley*.

*Note;* The Practice is now altered by a general Rule made *Mic. 6 Geo. II. Reg. 2.* and Exception may now be taken against such Bail.

Exception to Bail, tho' the same were taken by the Sheriff.

*Atkins, Administrator of Basset, versus Spence.*

*Foley.*

Intr. Trin. 3 & 4 Geo. II. Rot. 1421.

**T**ROVER brought by an Administrator where the Trover was in the Intestate's Time, and the Conversion in the Administrator's; and the Plaintiff being Non-suited at the Assizes, the Question was, Whether the Plaintiff should pay Costs on a Nonsuit? Cur' inclined to think

Costs on a Nonsuit against an Administrator.

*Mic. 4 Geo. II.* think that if the Action might have been brought by the Administrator in his own Right, he should pay Costs, but not otherwise: Sed advisari; and the Postea was ordered to stay. Afterwards in the same Term the Court ordered the Plaintiff should pay Costs, for that the Action might have been brought in his own Right.

*Salk. 314.*  
*Worfield v. Worfield.*  
*Litch 220.*  
*Shafto v. Coatsworth.*  
*Ante 14.*  
*Lamley v. Nichols.* *Post. Hayden v. Norton, Mich. 6 Geo. II.*

### *Ascough & al' versus Lady Chaplin.*

*Borret.*

*Brevs de Ventre inspiciendo.*  
*See Officina*  
*Brev. 409.*  
*East. 39 El.*  
*rot. 1250.*  
*Moor 523.*  
*BraB. lib. 2.*  
*fo. 69.*  
*Cro. Ja. 685.*

**A** Writ de Ventre inspiciendo returnable Tres Mich. on the Behalf of Edward Ascough, Esq; and Elizabeth his Wife, Anne Chaplin Spinster, Charles Fitzwilliams and Frances his Wife, Coheirs of Sir John Chaplin, Bart. their Mother, against Dame Elizabeth Chaplin, Widow of the said Sir John; the Writ was returned that the Lady was with Child, and a Motion made for the safe Custody of her until her Delivery; it was suggested that the Lady's Mother was likewise with Child, and therefore neither she nor any other Woman with Child were proper Persons to be with her; the Court agreed that such a Clause should be inserted in the Writ, and Ladies were named on the Part of the Prosecutors or Petresses, to attend the Lady during her Pregnancy and till her Delivery, but they must not name any Spinster; and the Mother was allowed to visit only.

### *Higgins versus Stuart.*

*Foley.*

*Hil. 4 Geo. II. 1730.*

*Notice of Trial or Inquiry, the Attorney is not known.*  
*Ante 55. Joy v. Francia*

**I**T was held by the Court, that Notice of Trial or Inquiry must be delivered to the Defendant, where the Attorney is not known or not to be met with.

*East. 4 Geo. II.*

*The Principal, Fellows and Scholars of Jesus College in Oxford, versus Vaughan.*

*Cooke.* Easter, 4 Geo. II. 1731.

**I**N Quare Impedit, the Plaintiffs were Non-suited at the Assizes for Surry, and now on their moving for a new Trial, the Defendant opposed the Motion, insisting that the Plaintiffs being out of Court by the Non-suit, the Court could not admit the Plaintiffs to move; but it was answered that the Question here was, If the Non-suit was regularly obtained, and whether or no the Plaintiffs opened the Cause, and if that Objection should prevail, it would be exceptio ejusdem rei cujus petitur dissolutio; the Court ordered Proceedings to be staid till Mr. Justice Probyn's Opinion should be asked; afterwards on his Certificate the Rule was discharged.

Motion for a new Trial where the Plaintiffs were non-suited. *Post. Williams v. Jones, East. 1734. Jones v. Hergeß, Mich. 1734. Swale v. Leaver, Mich. 1735.*

*Parsons & al' versus Smith.*

*Borret.*

**A** Motion to stay Proceedings, because the Notice of the Declaration was not sufficient, it not appearing in what kind of Action the Declaration was, whether Debt or Case; the Court debated this Matter, and were of Opinion that if the Notice imported the Nature of the Action, it was not necessary to set forth the Substance of the Declaration at large therein; but the Notice in this Case was only for 10 l. in which you are indebted for Work done, and on a *Quantum meruit*; and therefore it not appearing what the Nature of the Action was, since it might be an Action of Debt or Case, the Court ordered the Proceedings should stay.

Proceedings stayed, the Notice not being sufficient of the Declaration left in the Office: *Post. Sel-ler & Faceby, Hil. 5 Geo. II. Taylor & Sharman, Trin. 1735.*

*Note;* There was the like Resolution in a Cause, *Prior v. Horw*, this Term; and in another Cause, *Higmore v. Tiffin*, Hil. 5 Geo. II.

*Biddleston versus Atcherley.*

*Cooke.*

**I**N this Cause a Motion was made to set aside the Judgment, which had been signed after a Plea in Abatement was delivered; it appeared that the Declaration was delivered

vered

*East. 4 Geo. II.* vered the Eighth of February, and the Plea in Abatement not delivered till the Fourteenth of February; and it was insisted on the Part of the Plaintiffs, that this Plea in Abatement was pleaded after the Time limited by the Rules of the Court, and was therefore irregular, for that it ought to have been pleaded within four Days after the Declaration delivered or left in the Office, and could not afterwards be pleaded; of which Opinion was the Court; and therefore the Motion was denied, and the Resolution in the Anonymous Case in Easter Term 8 Geo. I. was established, where it is held that such Plea is void if not delivered within four Days after Declaration delivered, or Notice of Declaration served, even tho' no Rule to plead were given.

To plead in Abatement within four Days after Declaration delivered or left in the Office.

*Ante 23.*

### *Griffith versus Brown.*

*Borret.*

An Attorney in Execution discharged, being attending on Motion.

*Ante 60. Garden v. Sheers.*

*Post Newman*

*& Harrison, East. 10 Geo. II. Piggot v. Charkwood, Trin. 1734. Morley v. Grub, Trin. 1734.*

A Motion on the Petition of Mr. Harrison an Attorney, to be discharged, being taken in Execution at the Suit of Mr. Hoyle; it appeared he was taken at the Exchequer Coffee-House near Westminster-Hall, while he was attending on a Motion in this Court; and for that Reason the Court discharged him.

### *Taylor versus Fuller.*

Where a Bill need not be filed against an Attorney.

*Ante 43.*

*May v.*

*Constable,*

*Mich. 1654.*

*sect. 1.*

*See Reg. Cur'*

*Mich. 6 Geo.*

*II. that no*

*Attorney shall*

*be Bail.*

AN Attorney sued either as Executor or Administrator, or as Bail, has no Privilege, but may be sued as a common Person. And in the same Term one Vaughan, an Attorney of this Court and of the King's Bench, offered to be Bail but was refused, there being a Rule against it made in Michaelmas Term 1654. An Attorney of another Court may be Bail, but then he loses his Privilege, and so an Attorney of this Court, where the Plaintiff consents, may also become Bail, but thereby he loses his Privilege.

*Trin. 5 Geo. II.*

*Martin versus Sharopin.*

*Borret.* Trin. 5 Geo. II. 1731.

**T**HE Defendant was arrested and held to Special Bail, and moved to be discharged, having a Certificate from the Count de Broglio, the French Ambassador, of his being Master of the Horse; it appeared the Defendant was a Trader, and such a one as a Commission of Bankruptcy might have issued against; the Court discharged the Rule to shew Cause.

An Ambassador's Certificate produced but rejected.

Vide Stat. 7 Ann. cap. 12.

*Geale versus Chapman.*

*Foley.* Intratur, Hil. 3 Geo. II. Rot. 1471.

**U**PON the late Act for setting one Debt against another, a Motion that no Costs should be allowed for that there was no Verdict for the Defendant, only an Indorsement that 13 l. was due to the Plaintiff for Rent, but that on Ballancing the Accounts, there appeared due to the Defendant 13 s. the Court declared that the Indorsement on the Record was according to the Intent of the Act, and was a good Verdict to intitle the Defendant to have his Costs as in other Cases, and also his Costs for maintaining and supporting his Verdict.

On a Verdict in Favour of Defendant on the Act for setting one Debt against another, he shall have Costs.

Stat. 2 Geo. II. c. 22. & 8 Geo. II. c. 24.

*Holiday versus Scot.*

*Borret.* Mich. 5 Geo. II. 1731.

**A**N Attorney undertook to enter an Appearance for the Defendant and plead; the Court said they would compel him to enter the Appearance, but doubted whether the Plaintiff could sign Judgment without demanding a Plea in Writing; it was afterwards agreed that a Plea ought to be demanded in Writing.

A Plea to be called for in Writing, where an Attorney undertakes to appear for Defendant.

Mic. 4 Geo. II.

*Baker versus Miles.**Borret.*

Verdict set aside, and new Trial ordered, on Affidavit of the Jurymen.

**A** Motion to set aside a Verdict, and for a new Trial, upon an Affidavit of eleven of the Jury, wherein it was sworn that they had agreed on a Verdict for the Plaintiff and 5 s. Damages, but by Mistake the Foreman gave a Verdict for the Defendant: Per Cur', a new Trial upon Payment of Costs.

*Edwards, ex dimiss' Edwards, versus The Earl of Warwick.**Cooke.*

Motion for a Trial at Bar the same Term that the Motion was made.

**I**N Ejectment, a Motion for a Trial at Bar the same Term, it being suggested that the Defendant would be intitled to Privilege the next Term; it was objected that it is not usual to be granted the same Term in which the Motion is made; but the Court doubted, and ordered Precedents to be searched for; the Earl afterwards appeared in Court, and agreed by Writing under his Hand to waive his Privilege, and thereupon a Rule was granted for a Trial at Bar the next Term.

*Buxom, ex dimiss' Pellow, versus Pellow.**Cooke.*

A Term's Notice where Issue has been joined above a Year.  
Reg. Cur' Mich. 1654.  
sec. 21.  
Ante 2.  
Bower v. Street. Post. Paul v. Gleadhill, Hil. 7 Geo. II. This Practice is settled by the Rule East. 15 Geo. II. reg. 2.

**I**N this Cause the Question was, what Notice of Trial must be given on an Issue of above a Year's standing? It was settled that a Term's Notice must be given, and the Notice must be delivered before the Easiness-Day, otherwise not good.

*Whitchurch versus Worthington, an Attorney.*

Subscribing Bill to appear not good without entering Appearance in the Remembrance.

*Foley.*

**T**HE Court held that, upon a Bill filed against an Attorney, the Subscribing the Bill was only an Undertaking to appear, and the Defendant ought likewise to

to enter his Appearance in the Prothonotary's Remembrance, *Mic. 4 Geo. II.* which, upon Application, the Court will oblige him to do.

*Herne versus Chapman.*

*Borret.*

**A** Motion to set aside a Judgment signed the Morning next after the Day given by a Judge's Order for Time to plead; the Court were of Opinion, that the Day given by the Judge must be intended a whole Day, and that this was enlarging the Rule to plead one whole Day, and therefore the Plaintiff could not sign his Judgment till the opening of the Office in the Afternoon of the next Day after the Day given by the Judge was expired.

Time till such a Day given by a Judge to plead includes that whole Day, and till the opening of the Office the Afternoon of the subsequent Day.

Note; *Taylor versus Slocham, Mich. 1733. Cooke,* Time to plead was given till the first Day of next Term, by a Judge's Order; and the Court were of the same Opinion as above; and that no new Rule to plead was in that Case necessary to be given.

*Ante 17, 54. Buckmaster v. Troughton, Brown v. Woodward.*

*Dale versus Careless & al.*

*Borret.*

**A** Motion to enlarge a Rule, but the Party not coming on the Day upon which the Rule was made to shew Cause, and having given no Notice of the Motion, the Court refused to enlarge the Rule till Notice of the Motion had been given; declaring that Notice ought always in such Case to be given.

Notice to be given of Motion to enlarge a Rule after the Day to shew Cause.

*Robinson versus Simmonds.*

*Cooke.*

**U**PON a Motion for Leave to withdraw a Special Plea, and to plead the General Issue; the Court declared it might be done the same Term without Leave of the Court, on Payment of Costs, unless the Plaintiff have replied, and then it must be with Leave, and the Defendant must pay Costs.

Plea withdrawn the same Term without Leave.

*Molden*



Hil. 5 Geo. II.

*Molden versus Wrangham, ex dimiss. Camden.**Foley.*

Hil. 5 Geo. II. 1731.

Motion for  
Judgment in  
Ejectment on  
the Act 4  
Geo. II. c. 28.

(a) The Af-  
fidavit requi-  
red in this  
Case is in sub-  
stance as fol-  
lows, that the

Declaration was fixed upon such a Place, being the most notorious Part of the Premises in Question (there being no Person in Possession on whom the Declaration could be legally served); that half a Year's Rent was then due from the late Tenant; that no sufficient Distress was to be found upon the Premises to answer the Arrears then due; that the late Tenant held such Premises by Virtue of a Lease from the Lessor of the Plaintiff, and that therein is contained a Clause of Re-entry for Nonpayment of that Rent.

**U**PON a Motion on the 4 Geo. II. for Judgment in Ejectment; the Court said it was not sufficient for the Lessor of the Plaintiff to say generally in his Affidavit, that he has a Right to re-enter, but he must shew how he has such Right; but there is no Occasion to produce the Lease in Court upon the Motion, an Affidavit of the Facts being sufficient; (a) a proper Affidavit of the Facts required by the Act to be proved being now produced, the Court made the usual Rule for Judgment.

*Seller versus Faceby.**Borret.*

A Declaration may be delivered *de bene esse*, on the Return Day or after, and the Notice must specify the Nature of Action.

(a) Ante 16.  
*Anderton v. Moreton,*  
*Reg. Mich. 9*  
*Geo. II.*  
*Charlton v. Hankey, Mich.*  
*1733.*  
*Larv v. Re-*  
*well, Easter, 1734.*

**O**N a Motion to stay Proceedings, it was insisted that the Declaration being delivered the 22d. of October could not be regular, it being before the first Day of the Term; but the Court held it was regular, because a Declaration may be delivered on the Essoin or Return Day, or any Day after, (a) *de bene esse*, tho' a Rule can't be given till the first Day of the Term; another Objection was, that the Notice of the Declaration was not good, not setting forth the (b) Nature of the Action, whether Debt or Case; the Notice was, That a Declaration upon a Note under Hand, and for Goods sold, was filed in the Office; whereas it was insisted that an Action of Debt might be brought for the same, and therefore that the Nature of the Action was not sufficiently specified; of which Opinion was the Court, and held the Proceedings irregular.

(b) *Reg. Mich. 1 Geo. II. Post. Taylor v. Sherman, Trin. 1735.*

*Hil. 5 Geo. II.* the Court denied the Motion, and said the Defendant should have come sooner.

Note; *Chapple* versus *Thomas*, and *Wrath* versus *Rose*, the same Term, the like Motions were denied for the same Reason.

*Durrant, vid',* versus *Kerr & al'*; *Eadem* versus *Lover & al'*.

*Cooke.*

On Award to pay Costs, only common Costs to be taxed.

Ante 69.

*Southmead v. Northmore.*

**A**N Award to pay Costs; Mr. Justice Price ordered that Costs should be taxed as between Attorney and Client, and they were taxed accordingly; but on Motion to discharge a Rule which had been granted last Term for an Attachment, for not paying the Costs so taxed, the Court held the said Taxation irregular, and that the Defendant should not in any Case be charged but with Costs as between Party and Party, without a Special Order or Agreement for that Purpose; and they discharged the said Rule for an Attachment, and ordered that Costs should only be taxed as between Plaintiff and Defendant.

*Davis* versus *Edwards, Bart. ex dimiss. Major', &c. Salop.*

Inspection of Court-Rolls denied.

Ante 6. *Ann.*

Ante 26.

*Knights v.*

*Wotton.*

Ante 21.

*Lock v. Hyet.*

*Cooke.*

**A** Motion to inspect Court-Rolls, and produce them at the Assizes; the Court denied the Motion, and said where there is a Dispute between two Lords of Manors, the Court will not oblige either to expose his Title, Books, or Rolls.

*Thompson* versus *Merredeth*

*Foley.*

Costs refused, the Defendant an Inhabitant in London, and the Action under 40 s.

**A** Motion by Defendant for Costs, according to the Stat. 3 Jac. I. c. 15. the Defendant being an Inhabitant in London, and the Action under 40 s. but in this Case a Judgment had been signed and set aside, upon Terms of going to Trial, by which the Defendant had agreed to try it in this Court, and waived the Benefit of Costs by Virtue of the Stat. 3 Jac. I. c. 15. and therefore the Motion was denied.

*Reed versus Brown.*

East. 5 Geo. II. 1732.

**A** Motion to set aside a Judgment which had been signed for want of a Rejoinder, because the Defendant's Attorney was not called upon for a Rejoinder; it appeared that a Demand was made upon a former Agent for the Defendant's Attorney, but none had been made on the Agent then concerned in the Cause; the Court held, that calling upon a former Agent was not sufficient, for there must be a Demand made upon the Agent concerned in the Cause.

Judgment set aside because Defendant's former Agent only was called upon for a Rejoinder in Writing.

*Duffield versus Warden.*

*Cooke.*

**A** Motion to oblige the Plaintiff to sue out a new Writ of Error at his own Expence; the Plaintiff having delayed Signing his Judgment till the Return of the Writ of Error was expired, tho' called upon for that Purpose; the Court ordered a new Writ of Error to be sued out, at the Plaintiff's Expence, and that he should pay the Defendant his Costs.

Plaintiff to sue out a new Writ of Error at his own Costs, and pay Costs of Motion, he not signing his Judgment in Time. Ante 50. *Harding v. Avery.* Ante 54. *Griffin v. King.*

But see ante *Harding versus Avery*, Mich. 2 Geo. II. where it was held that the Plaintiff may sign his Judgment when he pleases, and if he thinks fit to defer Signing it till after the Return of the Writ of Error, he has a Right so to do, and might then take out Execution; and *Quere*, for it does not appear in this Case, that the Plaintiff hath in any Manner misbehaved himself.

*Webb versus Akers, ex dimiss. Burdus.*

*Warner.*

**A** Motion to set aside a Judgment in Ejectment, upon Affidavit that a Plea was left in the Office; it appeared there was a Plea, but the Filazer's Mark signifying that the Appearance was entered, was not stamped on the Rule; it was held that if a Plea in Ejectment is left in the Office, yet if the Rule by Consent is not annexed to it with the Filazer's Stamp, the Plaintiff may sign his Judgment.

Judgment in Ejectment held good, altho' a Plea was left in the Office, because the Rule was not marked with the Filazer's stamp, signifying that the Appearance was entered.

Note;

*East. 5 Geo. II.* Note; *Trueman* versus *Badright*, ex dimiss. *Rives*, Mich. 1733. *Thomson*, the like Determination was made by the Court on the same Point.

### *Hammond* versus *Horner*.

*Cooke.*

Judgment set aside for not staying a proper Time after Oyer given.

(a) See post. *Littlebales* v. *Smith*, this Term, and *Hartly* v. *Varny*, Hil. 7 Geo. II. where it is held that

**A** Motion to set aside a Judgment, for that the Defendant's Attorney demanded Oyer of the Bail-Bond, and the Plaintiff signed Judgment the same Day; the Plaintiff's Counsel insisted that there was a Rule given, a Plea demanded in Writing, and Oyer not demanded till the (a) Rule was out, and Judgment signed eight Hours after Oyer given.

The Court set aside the Judgment, and held that the Defendant ought to have a reasonable Time, after Oyer, to plead, but did not settle the Time. (b)

Oyer must be demanded before the Rule is out.

(b) See post. *Littlebales* v. *Smith*, this Term, *Theedham* v. *Jackson*, Mich. 6 Geo. II. and *Simpson* v. *Duffield*, Mich. 1737. in relation to this Point. See also *Blaxland* v. *Burges*, Mich. 1733.

### *Whitehead* versus *Goodyer*, Esq;

*Borret.*

Verdict set aside for want of 14 Days Notice, tho' Defendant was in Town. *Reg. Cur'* Mich. 1654. sec. 21. Ante 59. *Poulter* v. *Skinner*.

**U**PON a Motion to set aside a Verdict, for want of fourteen Days Notice of Trial, it was alledged for the Plaintiff, that the Defendant came to London and staid for some Time, and therefore that London ought to be taken as his Place of Abode, he then residing there, and consequently that the Notice which had been given was good; but the Court were of another Opinion, and set aside the Verdict; for they said the General Rule of Notice shall not be altered upon a Defendant's coming to London for a few Days.

### *Wilson* & al' versus *Spencer*.

*Idem* versus *Smith*.

*Cooke.*

Motion to set aside Judgment, for not paying for the Books tendered after a Concilium made.

**A** Motion to set aside Judgments signed in these Causes for want of paying for the Demurrer Books; the Defendants insisted that the Plaintiffs had made it a Concilium before the Books were tendered; the Court said that was no Excuse to the Defendants for not paying for the Books,

Books, the Plaintiff might make the Demurrer a Concilium again, the other being a Mistake, and held the Judgments to be regulat.

*East. 5 Geo. II.*

*Littlehales versus Smith.*

*Warner.*

A Motion to set aside a Judgment, because signed too soon after Oyer demanded; the Court said that the Defendant is to demand Oyer before the (a) Rule to plead is out, and that he hath (b) one Day after to plead.

When Oyer is to be demanded, and in what Time after the Defendant is to plead.

(a) Post. *Hartly v. Varay*, Hil. 7 Geo. II.

(b) But see ante 72. *Hammond v. Horner. Simpson v. Daffield*, Mich. 1737. and *Theobham v. Jackson*, Mich. 6 Geo. II.

*Webb versus London & al., ex dimiss. Burdus & al.*

*Thomson. Trin. 5 & 6 Geo. II. 1732.*

IN Ejectment, a Motion for Leave to withdraw several Pleas pleaded without the Defendant's Consent; it appeared that the Landlord (who had caused the Pleas to be pleaded) had not any Authority or Consent from the Tenant for so doing, and that his Title was acquired only by a late Judgment in Ejectment, and there did not appear any Collusion between the Lessor of the Plaintiff and the Tenants; the Court said if the Tenants would not consent, and give the Landlord an Authority to appear and plead those Pleas, he had not, by making himself Defendant, any Power or Authority so to do, and therefore they ordered the Pleas to be withdrawn; but in the Case of an old Landlord (who had been long in Possession) and his Tenants, it was said the Court would probably have interposed in his Favour.

Pleas in Ejectment withdrawn. Post. *Right v. Wrong*, *East. 1734.* But now see *Stat. 11 Geo. II. c. 19.*

Trin. 5 & 6  
Geo. II.

*Whitehead versus Price.*

*Cooke.*

Motion to stay  
Proceeding  
because the  
Action was  
under 40 s.  
Post. *Mathew*  
*v. Hilders*,  
Mich. 1732.

**A** Rule to shew Cause why Proceedings should not stay in this Court, the Cause of Action being under 40 s. but the Court discharged the Rule, because the Plaintiff may amend his Declaration on Application to the Court, and set all Right.

*Huer versus Whitehead.*

A Scire facias  
quashed at the  
Plaintiff's Re-  
quest *quia im-  
providē*, with-  
out Costs.  
See *Pool v.*  
*Bradfield*,  
Mich. 1734.  
Stat. 8 & 9  
W. III. c. 11.

*Cooke.*

Mich. 6 Geo. II. 1732.

**U**PON a Motion by the Plaintiff to quash a Scire facias, because it was sued out in a wrong County; the Defendant insisted upon Costs because he had entered an Appearance; but the Court said that unless the Defendant has pleaded, no Costs are to be allowed.

*Cotton & al' versus Bailie & al'.*

*Borret.*

Leave to pass  
a Writ of a  
former Year.  
Post. *Sheppard*  
*v. Harris*,  
Hil. 9 Geo. II.

**A** Motion for Leave to pass a Writ thro' the federal Dices, it was taken in the Year 1727. and one of the Cognizors was dead; the Court ordered that the Writ should pass as of that Year, but Notice was first to be given to the surviving Cognizor.

*Fagget versus Van Thienman.*

*Cooke.*

To amend the  
Entry of Bail  
in the Fila-  
zer's Book.

**M**OVED to amend the Entry of Bail in the Filazer's Book, by making it agreeable to the Instructions, viz. it was Insult' in the Instructions and Assi' in the Filazer's Book, and ordered to be amended Nisi.

*Fagget versus Van Thiennen.*

*Cooke.*

*The same Term.*

**I**T was moved to amend the Recognizance which was taken between the same Parties in Case, and to make it in Assault agreeable to the Writ; the Court ordered the Recognizance to be amended accordingly.

To amend the Recognizance of Bail.

Note; *Kitchingham & ux' versus Wellbourn*, Mich. 4 Geo. II. *Thomson*, the like Amendment was cited to have been made.

*Hickeringill versus Knight, in Debt;  
And Hickeringill versus Knight, in Case.*

*Thompson.*

**M**OTIONS having been made to set aside the Non-Prosses in these Actions, and Rules Nisi granted on shewing Cause, it appeared that one of the Non-prosses was irregular, for the Writ being a Clausum fregit, the Plaintiff had delivered the Defendant's Attorney a Declaration in Covenant, so that the Defendant ought not to have signed a Non-pros; for a Plaintiff on a Clausum fregit may declare in any Action.

Non-pros suffered to stand because the Defendant did not apply till after Judgment, in an Action brought upon such Non-pros.

The other Non-pros was regular, but it appearing that Actions had been brought on these Non-prosses, and Judgments obtained thereon; the Court discharged the Rules to shew Cause, for that the Defendant should have complained of the Irregularity sooner.

*Kirwood versus Backhouse.*

*Cooke.*

**A** Motion for Judgment in Ejectment; it was shewn by the Person that made the Affidavit, that he went to the Possessor in Question, and the Tenant's Wife refusing to open the Door, but speaking thro' the Wicket, he did shew her a Copy of the Declaration, and acquainted her with the Contents, and read the English Subscription to her, but as soon as he had so done, she shut the Wicket and refused to take the Declaration, and not being able to deliver the same, he affixed the same on the Door of the said

Motion for Judgment in Ejectment denied, Declaration being shewn to the Wife, but not tendered. But see post. *Ree v. Doe*, Hil. 1734.

Def.

*Mic. 6 Geo. II.*

*W*estmase, which the Tenant in Possession did on the same Day acknowledge to have received. The Court were divided in Opinion, to wit, the Chief Justice and Mr. Justice Denton, that it was not a good Service, and Mr. Justice Price and Mr. Justice Fortescue held the contrary, so no Rule was made.

*Note* ; It did not appear by the Affidavit that the Copy was tendered to the Wife, which the Court seemed to think would have been very material.

### *Negative versus Positive.*

*Borret.*

Motion for Judgment in Ejectment, the Possession vacant.

*Lond. II.* *A* Motion the 23d. of November for Judgment in Ejectment where there was a vacant Possession ; it was objected that the Motion came too late, that it should have been moved within a Week after the Beginning of the Term, according to the Rule Trin. 32 Car. II. but upon reading thereof the Court were of Opinion, that vacant Possessions were not within the Meaning of that Rule.

### *Hamson versus Chamberlin.*

*Borret.*

Issue of Nul tiel Record amended by Scire facias. Post. Cartwright v. Gardner, Trin. 10 Geo. II.

*A* Motion to amend the Record of an Issue of Nul tiel Record by the Writ of Scire facias ; all the Court after much Debate, were of Opinion that it might be amended by the Sci' fac', and ordered the Amendment accordingly.

### *Harveys versus Micklethwaite.*

*Borret.*

Fine ordered to pass after the Wife of the Cognizor was dead. Ante 74. Cotton v. Baile. Post. Sheppard v. Harris, Hil. 9 Geo. II.

*A* Motion against passing of a Fine, the Caption being taken the 21st. Day of May ; and the Wife of the Cognizor died the 22d. of May, upon much Debate and Examination into the Practice, and it appearing the King's Silver was paid, the Court ordered that the Fine do pass.



*Warwick versus Figg.*

*Mic. 6 Geo. II.*

*Thomson.*

**A** Motion to set aside an Execution taken out upon a Judgment signed in Trinity Vacation after the Expiration of the Writ of Error, which was returnable *tres Trin.* The Court were of Opinion that the Plaintiff could not regularly sign his Judgment and take out Execution thereon, till Michaelmas Term following, because every Judgment is of the first Day of the Term; so the Judgment having relation to the first Day of the Term, must be construed to be signed pending the Writ of Error, which was returnable *tres Trin.* (a) and consequently the Writ of Error attached upon the Judgment and was a Superfedeas, and Execution afterwards was irregular; which therefore the Court set aside, and ordered Wreathock the Plaintiff's Attorney to pay Costs.

Execution taken out after the Return of a Writ of Error set aside.  
Ante 54.  
*Griffin v. King.*  
Ante 50.  
*Harding v. Avery.*  
Ante 71.  
*Duffield v. Warden.*  
Post. *Cooke v. Harroch,*  
*East. 1733.*

(a) It seems otherwise where the Writ of Error is returnable the first Return of the Term.  
*1 Mod. 212.*

*Revel versus Snowden.*

*Borret.*

**A** Motion for a Common Appearance, upon the Determination in the Case of Jackson and Duckett, Hil. 13 Geo. I. because the Defendant was held to Special Bail upon the first Action; the Case was, The Defendant had been arrested and held to Special Bail, and afterwards rendered in Discharge of his Bail, and the Plaintiff proceeded against the Defendant as a Prisoner, and recovered a Judgment; and this being an Action of Debt brought upon that Judgment, and the former Bail being vacated by the Render, the Court held that the Plaintiff might well hold the Defendant to Bail in this Action, he not now having Bail in the first Action. (a)

Bail in an Action of Debt on the Judgment, because the Plaintiff had no Bail in the first Action, Defendant being in Prison.  
Ante 32.  
*Jackson v. Duckett.*

(a) But now by a General

Rule, Hil. 8 Geo. II. If a Prisoner be discharged for want of Prosecution, and afterwards is arrested by Action of Debt on the Judgment obtained in the Cause, a Common Appearance shall be accepted.

*Bowler versus Owens.*

**A** Motion by an Out-Pensioner of Chelsea College for a Common Appearance, suggesting that he is a Soldier, and within the Act 5 Geo. II. cap. --- for preventing Mutiny and Desertion; the Court denied the Motion, and held the

An Out-Pensioner of Chelsea College denied a Common Appearance, not reckoned a Soldier.

*Mic. 6 Geo. II.* Defendant no Soldier within the Meaning of that Statute.

*Post. Nicholls & al' v. Wil-*

*der, East. 6 Geo. II. Stat. 5 Geo. II. cap. 2. 6 Geo. II. cap. 3. 9 Geo. II. c. 2.*

### *Norton versus Gilbert.*

*Borret.*

Motion that the Plaintiff reverse an outlawry in another County at his own Costs, denied. Ante 61. *Hayes v. Longbotham.*

**A** Motion to reverse an Outlawry at the Plaintiff's Costs, for that the Defendant was outlawed in a Foreign County; on shewing Cause it appeared the Plaintiff had good Reason to proceed to Outlawry, the Defendant being a Clergyman and never appearing but on a Sunday, and altho' he was outlawed in a different County from that where he dwelt, yet the Outlawry was in the County where the Action was laid to arise. The Court gave their Opinions seriatim, and against the Opinion of the Chief Justice discharged the Rule to shew Cause, for that they held the Outlawry, tho' not in the County where the Defendant dwelt, yet where the Cause of Action was laid to arise, to be regular, and that it was not necessary to shew an Attempt to arrest the Defendant.

### *Hirst versus Dixon.*

*Cooke.*

Costs ordered the Attorney on taxing his Bill, a sixth Part not being taken off. *Stat. 2 Geo. II. c. 23.*

**A** Motion for the Plaintiff to have the Costs of taxing his Bill, there being only a Ninth Part taken off upon the Taxation, and a Rule to shew Cause was granted, which Rule was afterwards made absolute by the Court.

### *Threlkeld versus Goodfellow.*

*Thomson.*

Special Impar-  
lance when to be  
allowed.

**A** Motion to have the Impar lance Roll brought into Court, and that a Special Impar lance might be entered, in order that the Defendant might plead in Abatement; the Question was whether a Plea in Abatement could be pleaded within the first four Days of the subsequent Term, without a Special Impar lance, or whether a Special Impar lance should be granted to that end; the Court declared it was the established Practice, where the Declaration is delivered so late that the Defendant is not obliged to plead in the same Term, for him to apply to the Prothonotary for

a Special Imparance, within the first four Days in the succeeding Term, or that he could not plead in Abatement, which he may do, having such Special Imparance; but to all Declarations, where the Defendant is to plead the same Term, the Defendant may plead in Abatement within four Days after Declaration delivered, without any Imparance; but in such Case after the four Days no such Plea shall be accepted, tho' no Rule to plead be given.

*Mic. 6 Geo. II.*

*Ante 23.  
East. 1722.  
Ante 63.  
Biddleston v.  
Atcherley.*

Note; *Napper* against *Biddle*, *Mic.* 1735. *Cooke*, there was the like Resolution by the Court upon the same Point.

*Haydon, Executor, versus Norton.*

*Borret.*

A Bill against a Member of Parliament, and a Demurrer thereto; the Plaintiff moved to discontinue; and it was Debated whether he (being an Executor) should pay any Costs on such Discontinuance. Resolved, that Costs must be paid, it being the Default of the Executor himself.

An Executor must pay Costs on a Discontinuance.  
*Ante 14.  
Lamley v.  
Nichols.  
Ante 61.  
Atkins v.  
Spence.*

*Oades v. Forrest.*

*Thomson.*

A Scire facias was sued out into Middlesex against the Defendant as Bail, and a Fi' fa' issued, directed to the Sheriff of that County who returned Nulla bona thereon, then a common Fi' fa' was executed in London without mentioning it to be a Testatum, and now upon Motion to set the same aside, the Court held it good, and said there was no Occasion to insert the Form of a Testatum in the Writ, in order that the Writ itself might shew it was a Testatum; and they said, if it had been necessary, they would have given Leave to amend.

*Fieri facias* held good without making it in Form of a Testatum.

*Mathews versus Holcarn.*

*Thomson.*

A N Action of Debt for Rent quod reddat 21 s. and concludes ad dampnum 100 s. On a Motion to stay Proceedings, the Court not having Jurisdiction, it was held that the ad dampnum gave the Court Jurisdiction, and that if it had been necessary, the Court might permit the Plaintiff to add a new Count.

A Motion to the Jurisdiction of the Court, the Debt being under 40 s.  
*Ante 74.  
Whitehead v.  
Price.*

*Smith*

*Mic. 6 Geo. II.**Smith versus Paschall.**Cooke.*

The Damages  
laid in the  
Declaration  
are the Cause  
of Action.

**A** Motion to set aside a Verdict because the Proceedings were in Latin, and the Jury had only found 8l. Damages; the Court seemed to be of Opinion, that if the Action was commenced before the Expiration of the Sessions, then all Proceedings must be in Latin, and not one Part in English and the other in Latin; but as for the Cause of Action, whether it should be construed to be what is laid in the Declaration, or what is found by the Jury, was the Question, and a Rule Nisi was granted.

Vide the next  
Case.

By the Stat.  
5 Geo. II. c.  
27. after the  
Expiration of  
that Session,  
viz. 1 June,

1732. all Process under 10l. to be in English; and by 4 Geo. II. c. 26. after the 25th of March, 1733. all Process whatsoever to be in English.

Note; *Scot versus Ferral*, East. 6 Geo. II. *Cooke*, the Chief Justice delivered the Opinion of the whole Court, that the Damages laid in the Declaration should be deemed to be the Cause of Action, and all the Rules which had been granted for shewing Cause, in relation to the Construction of the Act in this Point, should be discharged.

*West versus Nicholls.**Thomson.*

Writ in Eng-  
lish and De-  
claration in  
Latin ad  
Damp. 40 l.  
is by the By.  
Vide the pre-  
ceding Case.  
By Stat. 5 Geo.  
II. c. 27.  
after 1 June,  
1732. Process  
Ec. under  
10l. to be in  
English; but by  
Stat. 4 Geo.  
II. c. 26.  
after 25  
March, 1733.  
all Proceedings whatsoever to be in English.

**P**rocess in English, and Declaration delivered in Latin; on Motion to stay Proceedings for that the Declaration should have been in English; for the Plaintiff it was insisted that this Declaration being laid ad dampnum 40l. should be considered as delivered by the By; and therefore notwithstanding the Writ was in English, yet the Dampnum being laid 40l. in the Declaration, the Declaration must be in Latin; of which Opinion was the Court, but that if the Plaintiff had declared for under 10l. he must have declared in English.

Note; *Webster versus Jordan*, East. 6 Geo. II. *Thomson*, a Declaration in English to the Damage of the Plaintiff 40l. and for that Reason Judgment was stayed.

*Welberry versus Lister.*

*Thomson.*

**A** Motion to put off a (a) Trial upon Affidavit of several Witnesses being wanting, who were sworn to be material Witnesses, as he believes; the Motion was denied because it is not sworn positively that they are material, which is always required, for that the Court will not delay the Plaintiff without manifest Cause.

*Mic. 6 Geo. II.*



Motion to put off Trial denied.

Post. *Price v. Warren, Hil.*

1733.

(a) Such Motion must be made two Days before the Trial, post. *Roberts v. Downes, East, 7 Geo. II.*

*Bartholomew versus Golding.*

*Borret.*

**A** Motion to set aside Judgment; it appeared that a Judgment had been set aside in the same Cause this Term for Irregularity in the Notice, and upon that the Plaintiff gave fresh Notice, without delivering a new Declaration, imagining the first Declaration would stand good; but the Court set aside this Judgment also, for the Plaintiff should have filed another Declaration according to the second Notice.

When Judgment is set aside for Irregularity, the Plaintiff must deliver another Declaration.

*Friend versus Mullens.*

*Cooke.*

**T**HE Defendant moved to stay Proceedings on the Bail-Bond, and to amend a Mistake in the Bail-piece, which Mistake was the Reason that the Plaintiff had assigned the Bail-Bond. It appeared the Plaintiff had delivered a Declaration in the Original Action, whereby he had concluded himself, and therefore could not proceed on the Bail-Bond; Proceedings were ordered to stay.

Proceedings on the Bail-Bond stayed, the Plaintiff having declared in the Original Action.

*Note*; the Plaintiff might have delivered the Declaration *de bene esse* before the Bail had been actually filed.

*Theedham versus Jackson.*

*Thomson.*

**I**N this Case the single Question was, Whether the Defendant should have the same Time to plead after Oyer given, as he had at the Time Oyer was demanded; the Court held he should, and set aside the Judgment, which was signed

Time of pleading after Oyer given.

*Mic. 6 Geo. II.* the next Day after Oyer given, the Oyer being demanded  
*But see ante 72.* two Days before the Rule was out.  
*Hammond v. Homer,* *Littlehales v. Smith,* 73. and *Simpson v. Duffield,* *Mich. 1737.*

*Lane, vid', versus Newman.*

*Cooke.*

Hil. 6 Geo. II. 1732.

Motion to change the Venue to Exeter denied. Ante 36, 41. Post. *Craffell v. Coker,* Hil. 9 Geo. II. *Coflar v. Standen,* Hil. 3 Geo. II.

**A** Motion by Mr. Serjeant Glyde to change the Venue from London to Exeter, upon Affidavit; but denied, for the Court will not change the Venue to a City and County of itself without Consent of the Parties.  
 Note; *Cowling versus Reynoldson,* Trin. 6 & 7 Geo. II. *Thomson,* the like Motion was again for the same Reason denied by the Court.

*Egleton versus Newman.*  
*Idem versus Senef.*

*Cooke.*

Motion on *Nul tiel Record*, the Defendants shew that the Plaintiff declared against the Defendants, upon a Judgment recovered against Curphey, when by the Record it appears that the Judgment was against Scurfee; which the Court held was a material Variance, and therefore Judgment was given for the Defendants.

*Simpson versus Gray & ux'.*

*Borret.*

No Execution upon a Judgment after the Year, without reviving by *Scire facias*, notwithstanding the Cause had been staid by Injunction. *Salk. 322: 6 Mod. 288. Booth v. Booth.*

**A** Motion to set aside an Execution, being sued out after the Year, without reviving the Judgment by *Scire facias*; the Plaintiff insisted, that he had been tied up by an Injunction of the Court of Chancery, and for that Reason there was no Necessity to sue out any *Scire facias*; but the Court over-ruled his Reason; for the Courts of Law do not take Notice of Chancery Injunctions, as they do of Writs of Error, and ordered the Execution to be set aside, and that the Plaintiff should pay the Defendant his Costs; but by Consent no Action was to be brought by the Defendant.

Pace

*Pace versus Ellison & ux'.*

*Cooke.*

**A** Motion to set aside a Non-pros for want of a Replication; the Defendant pleaded Non Assumpsit to Part, and in Abatement to the Residue; upon the Non Assumpsit no Issue was joined, but Demurrer to the Abatement; upon which the Defendant joined in Demurrer and signed a Non-pros for want of a Replication to the Non Assumpsit, and at the same Time paid for the Demurrer-Books, and defended the Argument. On arguing the Demurrer, Judgment was given against the Defendant, and a Respondeas ouster awarded; and now, upon hearing Counsel on both Sides, the Court set aside the Non-pros, but ordered the Plaintiff to pay the Costs thereof, but the Defendant was not to be allowed any Costs of the Motion.

Non-pros for want of Replication, where *non Assumpsit* was pleaded as to Part, and Demurrer joined as to the Residue.

*Wife & ux' versus Lawrence & al'.*

*Cooke.*

**A** Motion to discharge the Defendants, being taken on a Capias in Withernam, after Capias, Alias and Pluries on a Homine replegiando had been issued; it was insisted that the Capias in Withernam had issued irregularly, for that no Return was made upon the Capias or Alias, but on the Pluries only an Elongata was returned. The Court granted a Rule to shew Cause; afterwards the Defendants waived their Motion, and being brought up by Habeas Corpus came and offered to put in Bail as soon as the Plaintiff had declared against them, and prayed that, if the Plaintiffs did not declare against them instantly, they might be nonsuited and pay Costs; the Plaintiffs thereupon delivered a Declaration in Court, and the Defendants pleaded Non ceperunt; one of the Defendants being an Infant was admitted in Court by Joseph Minall her Guardian, who was also one of the Defendants; after the Guardian was bound in a Recognizance of 400 l. by his Consent, as well for the Infant Anne Lawrence, as for his Wife Mary Minall, severally, and the Bail in 200 l. severally, viz. John Nichols, Matthew Langley, Samuel Kirton and Benjamin Godfrey, according to the Form in the Case of *Hatt & ux' versus Lisset*, Mich. 1 Geo. II. Upon this the Sheriff was discharged, and the Defendants were set at Liberty.

*Habeas Corpus cum Causa* upon a Homine Replegiando.

See ante 39. 40, 41. *Hatt & ux' v. Lisset.*

*Tasker*

*Hil. 6 Geo. II.**Tasker versus Geale & al.**Cooke.*

Attachment  
upon a *Rescous*  
and *Capias* in  
the same  
Writ.

*Officina Brev.*  
194.  
Post. *The King*  
*v. Philips,*  
*East. 6 Geo. II.*

A *Rescous* was returned, upon which the *Plazer* made out an Attachment, and in the same Writ he inserted a *Capias* with an *Acetiam*, as a Continuance of the former *Capias*, in order to prosecute the Suit against the Defendant; and now the Court was moved to set aside such Writ, upon which the Defendant had been arrested, and was brought up by Habeas Corpus, and committed to the Fleet for want of Bail; but the Court held the Proceedings entirely regular, and that the Writ was made out according to common Form, and therefore denied the Motion.

*Thomas versus Bushell.**Cooke.*

Judgment  
held good up-  
on a Decla-  
ration left in  
the Office,  
tho' the De-  
fendant's At-  
torney was  
known, he  
having No-  
tice given  
him of the  
Declaration.  
Ante 50.  
*Morris v.*  
*Parry.*  
Post. *Hutch-*  
*ings v. Lilly-*  
*man, Hil. 9*  
*Geo. II.*

A Motion to set aside the Judgment, upon Affidavit that the Declaration was left in the Office, whereas the Defendant had entered his Appearance, and the Plaintiff well knew the Defendant's Attorney, and therefore should not have left it in the Office; but it appearing that Notice thereof had been delivered to the Defendant's Attorney, the Court declared that leaving a Declaration in the Office, and giving Notice to the Defendant's Attorney, was equivalent to the Delivery of it to the Attorney, and so the Judgment was held to be regular; and it was also declared, that the Plaintiff's Attorney is not bound to give Notice the same Day the Declaration is left in the Office, but may give Notice in any reasonable Time afterwards, but it is deemed as no Declaration but from the Day of Notice.

Note; *Hale versus Breedon, East. 6 Geo. II. Borret*, the like Resolution upon the same Point of Practice.

*Stanton versus Winch.**Thomson.*

Inquiry set a-  
side, being  
executed the  
Day after it  
was return-  
able.  
Post. *Suttle v.*  
*Laycon, Mich.*  
1733.

A Motion to set aside an Inquiry, being executed the Day after it was returnable, the Return-Day being Sunday, and the Inquisition taken on the Monday; the Court held the Execution of the Inquiry irregular, and set the same aside; but the Plaintiff had Leave to proceed to the Execution of a new one upon Payment of Costs; and it



it was said a Writ of Inquiry may be executed at any Time on the Return-Day before the Rising of the Court. *Hil. 6 Geo. II.*

*Jenkinson versus Staples, Spooner Vouchee.*

*Cooke.*

**A** Motion to amend a Recovery, by inserting several Parishes which were left out in the Instructions to the Curitor; it appeared that the Deed to lead the Uses of the Recovery was dated the 7th. of October, the Writ of Entry tested the 11th. of December, and returnable in Mensur Mich. The Court ordered the Recovery to be amended. *Recovery amended by putting in several Parishes. Ante 9, 17, 26. Post. Sheppard v. Harris, Hil. 9 Geo. II.*

*Spring versus Bilson.*

*Thomson.*

**A** Motion to bring Money into Court after Judgment had been signed, and set aside on Payment of Costs, but denied because Judgment had been regularly signed. *No Tender or bringing Money into Court after a regular Judgment. Ante 59. Tunney v. Clark.*

*Makepeace versus Stevens and others.*

*Cooke.*

**I**N Ejecment, on the Trial at the Assizes, a Case was made and referred to the Judge of Assize, and he afterwards refer'd it to the Opinion of the Court; and now a Question arose in what Manner the Postea is to be delivered to the Party, whether by a Certificate from the Court by Rule to the Judge who tried the Cause, and then by his Order, or whether the Court should make a Rule for the Delivery thereof, without applying to the Judge of Assize; the Court, after due Consideration, made a Rule for the Delivery of it without any Application to the Judge of Assize. *A Case made before a Judge of Assize, and he refers it to the Court, and the Court direct the Delivery of the Postea.*

*Godfrey versus Mathews & al.*

*Cooke.*

**A** Common Clausum fregit was sued out, returnable the first Return of this Term, a Declaration filed de bene esse pursuant to the Rule made in Easter Term, 3 Geo. II. and Notice

*Hil. 6 Geo. II.* Notice thereof delivered, and a Rule to plead given; the Plaintiff signed Judgment before the Expiration of eight Days from the Delivery of such Notice, tho' the Defendant lived above 20 Miles from London. Upon a Motion to set aside the Judgment, the Court held that the Plaintiff should have staid eight Days after the Delivery of the Notice of the Declaration, tho' he gives but a four Days Rule to plead, and therefore set aside the Judgment.

Judgment set aside because signed before the eight Days expired. Post. *Lazenby v. Bradley*, Mich. 1733.

### *Zouch versus Bell.*

*Thomson.*

**A** Motion for Costs for not proceeding to execute a Writ of Inquiry; the Defendant had been put to very great Expences by the Plaintiff's causing many Notices to be delivered, which had never been countermanded; on hearing Counsel on both Sides the Motion was denied, for it has never been the Practice to grant Costs for not proceeding to execute Writs of Inquiry. (a)

(a) But. see *Reg. Cur'*

*Trin. 13 Geo. II.* by which the Practice is altered, and Costs are now given.

### *Dixie, Bart. versus Somerfield & al.*

*Cooke.*

Intr. Trin. 5 & 6 Geo. II. rot. 706.

**I**N Trespas (inter alia) quare Clausum freger' & solum, &c. cum rutris, marris & ligonibus effoder' & subverter', nec non palos, repagula & januas scilt', centum palos, &c. ibidem fix' & erect' ad valenc', &c. freger', diruer' & prostraver', &c.

A Verdict was found for the Plaintiff and Damages under 40s. and now a Motion was made that the Plaintiff might be allowed full Costs, and a Rule Nisi granted for that Purpose; but on shewing Cause the Rule Nisi was discharged; for the Freehold might have come in Question in this Action, and therefore the Judge's Certificate was necessary to intitle the Plaintiff to full Costs.

Full Costs denied in Trespas.

Ante 2, 3, 24, 44. Stat. 22 & 23 Car. II. c. 9.

*Gynes qui tam* versus *Stephenson*.

*Cooke.*

**A**N Action upon the Statute of 5 Eliz. cap. 4. for exercising the Trade of a Glover, without serving Seven Years Apprenticeship, and a Verdict for the Plaintiff, and 4l. given for the Penalty pursuant to the Act; the Defendant moved that Proceedings should be made upon Payment of the 4l. and a Rule to shew Cause being granted, upon the Plaintiff's shewing Cause, the Question was, Whether any Costs should be allowed, and the Rule being enlarged till next Easter Term, the Court, upon hearing Counsel on both Sides, then held that no Costs ought to be allowed, for the Statute gives none; and the Plaintiff in this Case is not a Party injured, but a Common Informer, and therefore is not within the Meaning of the Statute of Gloucester, which gives Costs only where he should recover Damages; but in Case the Plaintiff had been a Party grieved, and recovered a certain Penalty, such Penalty should be considered as a Recompence for his particular Damage, and he should have Costs within that Stat. The former Rule was made absolute.

Costs denied upon a Verdict on the Stat. 5 Eliz. Vide ante 22. *Pempe qui tam v. Tinsley*.

*Stat. Gloucester, 6 Ed. I. c. 1.*

*Franklin* versus *Nash*.

*Thomson.*

**A** Motion for an Attachment against the Sheriff, upon a peremptory Rule to return a Writ, on Notice to him of his Under-Sheriff, and Affidavit that the Rule was served on the (a) High Sheriff, and that the Writ was not returned or filed with the Custos Brevium.

The Court said that the Notice to the High Sheriff was good, for both he and his Under-Sheriff are subject to the Court, and granted an Attachment against the High Sheriff.

*that such Rules should be served on the Under-Sheriff, and therefore it is now expressed in the Rule, that the Sheriff shall peremptorily return the Writ on Notice to be given to his Under-Sheriff.*

Attachment against a High Sheriff on Affidavit of Service of Rule on him.

See *Arn v. Neeler*, Mich. 9 Geo. II.

(a) *The Court have since thought it more proper*

*Cooke*

Eas. 6 Geo. II.

*Cooke versus Harrock.**Cooke.*

Easter, 6 Geo. II. 1733.

Execution  
good tho'  
a Writ of  
Error, the  
final Judg-  
ment being  
signed after  
the Expirati-  
on of the Writ  
of Error.  
Ante 50.  
*Harding v.*  
*Avery.*  
*Warwick v.*  
*Figg, Mich.*  
*6 Geo. II.*  
*1 Mod. 212.*

**A** Motion to set aside an Execution taken out after the Expiration of the Writ of Error; it appeared the Writ of Error was returnable before the Final Judgment was signed, and therefore the Court held that it could not remove the Record of that Judgment; and denied the Motion.

*Note;* If the Writ of Error had been returnable after the first Return of the Term in which Judgment was signed, it would have removed the Record, such Judgment having relation to the Day in Bank.

*Hefelton versus Lister, Esq;**Borret.*

A Defendant  
committed to  
the Fleet, for  
endeavouring  
to bribe the  
Plaintiff's At-  
torney not to  
appear against  
him on justifi-  
fying Bail.

**A** Motion to justify Bail upon Examination of the Bail in Court; the Plaintiff's Attorney shewed to the Court that the same Persons were Bail in another Cause, and represented that he verily believed they were very insufficient, for the Defendant himself had told him they were not worth a Goat, he likewise informed the Court that one Dewell a Sheriff's Officer had just then been with him, and told him if he would go out of Court, the Defendant would give him half a Guinea; Dewell was likewise examined upon Oath, and declared the same; upon this the Court all agreed that this was an Attempt in the Defendant to pervert Justice, and a notorious Contempt of the Court, and committed him to the Fleet till farther Order.

*The King versus Philips.**Thomson.*

Attachment  
of course on  
a Rescue re-  
turned.  
Ante 84.  
*Tasker v.*  
*Geale.*

**T**HE Court declared that, upon a Rescous returned, an Attachment goes of course without Motion, and when the Party offending is brought in, he is to be fined, and not examined upon Interrogatories, because the Return of the Sheriff is a Matter of Record, and not traversable, and the Party, if he is injured, may bring an Action against the Sheriff for a false Return.

*Gilbert versus Morshead.*

*East. 6 Geo. II.*

*Borret.*

**I**N an Action of Trespass for mesne Profits, a Motion was made by the Plaintiff, for Leave to quash his own Writ of Inquiry, and to issue a new one, upon several Affidavits on his Behalf, that the Jury gave very small Damages; that the Sheriff would not admit the Plaintiff to prove his Title, in order that the Jury might Assess Damages from the Time it accrued to him; and that the Defendant's Attorney and others influenced the Jury to favour the Defendant. The Court seemed to think that this was a Misbehaviour in the Sheriff and the other Persons, and granted a Rule to shew Cause.

Motion for a new Writ of Inquiry, in an Action for mesne Profits, where the Jury gave small Damages.  
*Post. Gilbert v. Nibblingale, Mich. 1736.*

*Hart versus Jewks.*

*Thomson.*

**O**N a Motion to set aside a Judgment in Dower, because the Plaintiff had not given a peremptory Rule to plead, as usual in Real Actions; it appeared that the Defendant had pleaded a Plea in Abatement, but without an Affidavit to verify the Truth of the Plea; the Court set aside the Judgment, and allowed the Defendant four Days time to plead.

In Dower, a peremptory Rule to plead.  
*Tomkins v. Perry, Trin. 8 & 9 Geo. II. Ante 38. Delafountain v. Mings.*

*Note;* The Judgment in this Cause was set aside, because no peremptory Rule to plead was entered, otherwise the Judgment would have been regular: A Plea in Abatement without Affidavit to support the Truth thereof being held to be no Plea at all.

*Nichols & al' versus Wilder.*

*Cooke.*

**A** Motion to discharge a Soldier arrested and held to Bail, and a Rule Nisi granted; upon shewing Cause it appeared that this was an Action of Debt upon a Judgment, and that the Original Action, in which the Judgment had been recovered, was for a Debt under 10 l. The Court said the Act of Parliament for preventing Mutiny, &c. intended the Debt that was due at the Time of holding to Bail, and this being an Action of Debt, on a Judgment for upwards of 10 l. tho' the Original Cause of Action did not amount to so much, is not within the Intent of the Act; and therefore they discharged the Rule to shew Cause.

Motion to discharge a Soldier arrested.

*Stat. 5 Geo. II.*

*Ante 77. Bowler v. Owens.*

*Note;* *Bilson* versus *Smith*, *East. 5 Geo. II. Foley*, the like Resolution upon the same Point. But since by the *Stat. 13 Geo. II.* for preventing Mutiny and Desertion, the original Debt must be 10 l.

A a

*Daking*

Easf. 6 Geo. II.

*Daking versus Thornhill.**Thomson.*

Where the Plaintiff may levy Interest and Costs to the Time the Execution is completed.

**A** Verdict and Judgment for the Plaintiff on a Bond, on which Execution was taken out, and the Debt, Interest and Costs, to the Time the Execution was completed, levied out of the Penalty; the Defendant moved for Restitution of all the Money levied, being 37 l. 10 s. except 21 l. which was allowed on the Postea; this Matter was long debated by the Court, at length they refer'd it to Mr. Prothonotary Thomson, to compute what was due, as between Attorney and Client, and afterwards they seemed to be of Opinion, that in all such Cases the Prothonotary should allow Interest and Costs from the Time of the Judgment to the completing the Execution.

*Osborn vid' versus Carter.**Cooke.*

Execution of an Outlawry on a Sunday set aside, but an Attachment denied.

**A** Motion against several Persons for executing an Outlawry on a Sunday; the Rule was to shew Cause why the Defendant should not be discharged, and why an Attachment should not be issued against them; upon debating this Matter the Rule for the Discharge of the Defendant was made absolute, and that Part of the Rule for an Attachment was discharged, because the Act of 29 Car. II. cap. 7. gives a Remedy by Action.

*The King versus Tirrell & al.**Cooke.*

Trin. 6 &amp; 7 Geo. II. 1733.

Rescuers admitted to Bail, and Fine respited till Determination of an Action against the Sheriff for a false Return.

**A** Rescuers returned this Term, and a Motion by the Rescuers to submit to a Fine, or to be admitted to Bail, they being advised to bring an Action against the Sheriff for a False Return: The Court declared that if the Rescuers intended to bring an Action against the Sheriff, they would admit them to Bail, and respite the Fine till the Event of such Suit, and upon the Rescuers offering to bring an Action and entering into a Recognizance for their Personal Appearance, the Court ordered them to be discharged.

*Nota*; A Verdict being given against the Sheriff, the Court on Motion and producing the Postea, ordered the Recognizance to be discharged.

*Trin. 6 & 7  
Geo. II.*

*Herbert versus Shaw.*

**A** Motion to change the Venue from Middlesex to the County Palatine of Lancaster, but denied; for the Court hath constantly denied such Motions for changing the Venue into a County Palatine.

Venue not changed to a County Palatine.

*Post. Craftell*

*v. Cocker, Hil. 9 Geo. II. And vide ante 36. Gardiner v. Forbes.*

*Church versus Jason, Bart.*

*Cooke.*

**A** Motion to stay Judgment in an Action of Debt on a Bond, the Declaration being in English, but the Alias dict' in Latin, as in the Bond; and a Rule Nisi was granted; upon shewing Cause it was insisted for the Plaintiff that the Alias dict' is a necessary Description of the Person that entered into the Bond, and as there might probably be some Variance between his Description therein and the Addition in the Declaration, the Declaration would not be good without it; the Court held it was a good Declaration, and therefore discharged the Rule to shew Cause.

Motion to set aside Judgment, the Alias dict' being in Latin, as in the Bond, but denied.

*Nota;* The Court seemed to think that it was not material whether the *Alias dict'* were inserted or not, and that if an *Alias dict'* be inserted in a Declaration upon a Specialty, it must agree literally with the Deed or the Declaration will be bad even on *Non est factum*.

*Harwood versus Denny.*

*Thomson.*

**A** Declaration and Issue of the same Term, the Plaintiff's Attorney insisted upon being paid for two Copies of the Declaration, otherwise he threatened to sign Judgment; to prevent which, the Defendant's Attorney paid for both, but afterwards moved in the Treasury that the Plaintiff's Attorney should return the Money he received for one of those Copies; which the Court ordered accordingly.

Declaration and Issue of the same Term, only the Plea, Replication, &c. in the latter to be paid for. *Post. Rider v. Somersfield, Mich. 1733.*

*Note;* *Palmby versus Masters, Trin. 6 & 7 Geo. II. Cooke,* the Court made the like Rule.

*Panter*

Trin. 6 &amp; 7

Geo. II.

*Panter versus Coppin vid.**Thomson.*

Judgment set aside, being signed after a Plea of Outlawry in Bar, not pleaded *sub pede sigilli*.  
*Cro. Car.* 95, 105.  
*Robinson.*  
*2 Kent.* 282.

**A** Motion to set aside Judgment, a Plea having been delivered; it was insisted upon by the Plaintiff's Counsel that the Defendant had pleaded an Outlawry in Bar, but had not pleaded it *sub pede sigilli*, as he ought to have done; but the Court set aside the Judgment, and said if a Plea in Bar is insufficient, the Plaintiff should apply to the Court or demur, and not sign Judgment; for the Court, and not the Party, is to judge whether or no Matters are properly pleaded.

*Morse versus Farnham.**Thomson.*

Motion to set aside Judgment denied because it came too late.  
*Ante* 47.  
*Jones v. Meriden.*  
*Ante* 69.  
*Smith v.*

**I**N this Cause, the Plaintiff had entered an Appearance for the Defendant one Day too soon, and consequently irregular, but the Defendant having received a Declaration, and suffered Judgment to go, and not complaining in Time, the Court discharged the Rule which had been made to shew Cause.

*Jenks. Post. Grimes v. Clever, Mich. 11 Geo. II.*

*Alsop versus Bagget.**Cooke.*

Notice to appear on Process must be for the

Essoin-Day.

*Vide post.* 97.

*Jenner v.*

*Wilkinson.*

98. *Green v.*

*Watkins.* 100. *Loyd v. Beston and Cort against Turner.*

**I**N this Cause the Court Resolved, that on the Copy of the Process which is served upon the Defendant, Notice is to be given to appear on the Essoin-Day, and not on the Appearance-Day.

*Note*; In this Cause last Term the Court were of Opinion, that the Notice should be for the Appearance-Day, but now reconsidering the Matter, they determined as above.



*Suttle versus Laycon*

*Mic. 7 Geo. II.*

Mich. 7 Geo. II. 1733.

**A** Motion by the Plaintiff to quash his own Writ of Inquiry, which was executed the Day after the Return; the Defendant insisted upon Costs; the Court refused to grant any Costs, and quashed the Writ of Inquiry, and gave the Plaintiff Leave to sue out another; but on a second Motion by the Defendant, setting forth that he had been at great Expence in defending the Writ, the Court ordered Costs to be paid the Defendant.

Writ of Inquiry set aside by the Plaintiff, and Costs allowed the Defendant. Ante 84. *Stanton v. Winch.*

*Ryder versus Somersfield.*

*Thomson.*

**U**PON a Motion to set aside a Judgment signed for not paying for the Issue, the Defendant alledged the Issue was overcharged; the Court said that the Defendant was to pay instantly so much as was charged upon the Issue; but if he apprehended the same was too much, he might apply to the Court, and they would order the Plaintiff's Attorney to refund, so they held the Judgment to be regular, but afterwards set aside the same, upon Payment of Costs.

Judgment for not paying for Issue the though the Plaintiff had overcharged it. Ante 91. *Harwood v. Denny.*

*Bond and another against Foze.*

*Cooke.*

**A** Rule was made in Hillary Term last, to bring 63 l. 11 s. 4d. into Court subject to the Variation of Mr. Lawrence's Bill, but the Money was not brought in until the 22d. of October this Term; the Plaintiff in the mean Time proceeded to Judgment, which Judgment was set aside upon Terms, and afterwards a Plea was pleaded, and a Motion, and Leave given to withdraw the same, and Judgment given with stay of Execution till a certain Time, which Time being expired, Execution was sent down; and this Term the Plaintiff moved to set aside the Rule for bringing Money into Court, the Defendant not complying with the Rule in due Time; on hearing Counsel on both Sides, the Court stop'd the Plaintiff's Proceedings, but the Defendant was ordered to pay all Costs to this Time.

Money not brought into Court pursuant to a Rule obtained for that Purpose.

*Note;* The Cause was afterwards compromised by Consent of the Parties.

*Mic. 7 Geo. II.**Kingdon versus Herne and Frost.**Cooke.*

Inquiry set aside for want of Notice to each Defendant.

*Stat. 12 Geo.*

*I. c. 29.*

*5 Geo. II.*

*c. 27.*

*Reg. Mich. 1*

*Geo. II.*

**A** Motion to set aside an Inquiry, because one of the Defendants was not served with Notice of the Execution of the Inquiry. Per Cur; Where the Proceedings are according to the Act 12 Geo. I. and no Attorney appears, each Defendant ought to have Notice; so the Inquiry was set aside.

Note; *Skinner versus Mannock*, *Mic. 1736*. *Cooke*, the like Case and Resolution.

*Walton against Stanton.**Thomson.*

Judgment by Confession

good, the Defendant tho' in Custody

being an Attorney.

*Post. Carter*

*v. Smith, Hil.*

*9 Geo. II.*

**A** Motion to set aside a Judgment, because the Warrant of Attorney was given when the Defendant was in Custody, and no Attorney present; a Rule to shew Cause was granted, but on shewing Cause, the same was discharged, it appearing the Defendant himself was an Attorney.

Judgment set

aside tho'

signed for not

paying for the

Issue, it being

tendered in

the Country.

*Post. Addesley*

*v. Dixie, Trin.*

*1734.*

*Evans v.*

*Flack, Mich.*

*1734.*

*Taylor v.*

*Larson, Mic.*

*1735.*

*Cooke.*

**A** Motion to set aside a Judgment, which had been signed for want of paying for the Issue; it appeared that the Issue was tendered in the Country, and not to the Agent in Town; the Court declared those Things should not be transacted in the Country, but by the Agents in Town, neither should Declarations or any other Pleadings be delivered in the Country; and the Judgment was set aside.

*Lazonby against Bradley.**Cooke.*

Judgment

signed within

eight Days af-

ter Declarati-

on delivered

to the Attor-

ney.

*Reg. Cur' Mic.*

*3 Geo. II.*

*East. 3 Geo. II.*

*Ante 85.*

*Godfrey v.*

*Matthews,*

*Post. Charlton*

*v. Hankey,*

*Mic. 1733.*

**I**N this Cause Judgment was signed before the Expiration of eight Days after Declaration delivered to the Attorney, the Defendant living above twenty Miles from London; the Court said it was their Intent that the late Rules should extend to Declarations delivered to Attornies, as well as to Declarations filed in the Office de bene esse, and Notice thereof delivered to Defendants; and set aside the Judgment.

*Blax-*

*Blaxland versus Burgeſs, Widow.*

**T**HE Declaration was filed the 3d. of November, and Notice thereof and Rule to plead given the ſame Day, on the 12th. the Defendant pleaded a Release with a Proſert in Cur', the ſame Day the Plaintiff demanded Oyer in Writing, and on the 14th. in the Afternoon ſigned Judgment for want of Oyer; the Queſtion was, Whether the Plaintiff could ſign his Judgment on the Defendant's not giving Oyer according to the Demand notwithstanding the Plea? Upon this Point the Court were unanimouſly of Opinion, that in Caſe a Defendant pleads with a Proſert, and Oyer is demanded, and not given in a reaſonable Time, the Plaintiff may ſign his Judgment, it being eſteemed as no Plea till verified by Oyer; and they held the Judgment to be regular.

Where a Defendant pleads with a *Proſert* Oyer muſt be given in a reaſonable Time after Demand, or Judgment may be ſigned. See ante 72. *Hammond v. Homer.* Ante 81. *Theobald v. Jackson.* Ante 73. *Littlehales v. Smith, & poſt. Simpson v. Luffield, Mich. 1737.*

*Charlton againſt Hankey and Alſop.*

*Cooke.*

**A** Motion to ſet aſide a Judgment, becauſe the Plaintiff did not ſtay four Days for a Plea after the eight Days for Appearance were expired, but ſigned his Judgment the ſame Day he entered the Appearance for the Defendant, which was the 9th. Day: But it appearing that the Declaration had been delivered de bene eſſe, and that the Rule to plead was out before the Appearance entered, the Court denied the Motion.

Judgment good on a Declaration delivered de bene eſſe. *Reg. Cur' Mic. 3 Geo. II.* Ante 68. *Seller v. Faceby.* Ante 79. *Morſe v. Farubam.* Appearance and Notice to appear. Ante 47. *Jones v. Meriden.*

*Nota;* By the Statute of 12 Geo. I. cap. 29. it is Enacted, That if ſuch Defendant or Defendants ſhall not appear at the Return of the Proceſs or within four Days after ſuch Return, it ſhall be lawful for the Plaintiff upon Affidavit, &c. to enter a Common Appearance; and under this Statute it was the Practice for the Plaintiff's Attorney to enter the Defendant's Appearance the next Day after the Appearance Day.

But by the Statute 5 Geo. II. cap. 27. *The Defendant or Defendants* (a Copy of the Proceſs in Engliſh having been ſerved as by the ſaid Act is directed) *ſhall appear at the Return thereof, or within eight Days after ſuch Return.*

Hil. 7 Geo. II.

*Price and another against Warren.**Cooke.*

Hil. 7 Geo. II. 1733.

Motion to put  
off Trial de-  
nied.  
Ante 81.  
*Welberry v.  
Lyster.*

**A** Motion to put off a Trial, upon the Defendant's At-  
torney's Affidavit that T. M. was a material Witness,  
and was beyond York, and that he could not have him in  
London time enough to give his Evidence upon the Tri-  
al; the Court said the settled Rule is, that the Defendant  
must make Affidavit himself, without which the Trial is  
never put off; therefore the Motion was denied.

*Hall versus Bilby.*

To set aside  
Process ex-  
ecuted in a  
Franchise.

**A** Motion to set aside the Service of Process in a pecu-  
liar Franchise, the same not having been served by the  
proper Officer; whereas the Statute of 5 Geo. II. cap. 27.  
says, That in peculiar Franchises and Jurisdictions the proper  
Officer shall execute the Process; but the Court held that this  
Process was well served, for the Statute does not make  
such Service of Process void, nor would an Execution,  
executed in such Franchise, tho' not by the proper Officer,  
be void; but the Statute only intended to save the Right  
to such Officers, who may, if they are injured, take such  
Remedy as they shall be advised, but such Service is no  
ways impeached by the Statute.

A Motion for  
Oyer denied,  
the Rule being  
out.  
See ante, 72.  
*Hammond v.  
Horner,  
and Littlebales  
v. Smith, ante  
73.*

*Hartly versus Varny.**Cooke.*

**A** Motion for Oyer; but it appearing that the Rule to  
plead was out, the Court denied the Motion, for O-  
yer ought to be demanded before the Rule is out.

*Martindale versus Galloway.**Coke.*

To withdraw  
a Plea.  
(a) The De-  
fendant might  
(before any  
Replication) have withdrawn his Special Plea, and pleaded the General Issue without Leave. Ante 67.  
*Robinson v. Simonds.* And vide post. *Sherlock v. Templer, Mich. 10 Geo. II.* and *Hunt v. Puckmore,*  
*East. 10 Geo. II.*

**M**OTION for Leave to withdraw a Special Plea of  
Plene Administravit, and to plead (a) Plene Administravit  
generally,

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generally, which was granted on Payment of Costs; but it was said that if the Defendant had pleaded the General Issue, they would not let him withdraw that, and plead any other Plea. Hil. 7 Geo. II.

*Pryor versus The Earl of Ilay.*

*Thomson.*

**A** Declaration upon Promises; the Defendant pleaded double, Non assumpsit and Non assumpsit infra sex Annos, on the Non assumpsit the General Issue was joined, and to the Non assumpsit infra sex Annos the Plaintiff replied an Original filed; and thereupon Issue of Nul tiel Record was joined; on this last Issue the Plaintiff has Judgment, and an Inquiry was awarded in the Common Form and executed, but no Proceedings were had on the first Issue of Non assumpsit, which it was insisted was irregular, for the Record of Nisi prius should have been made up, as well to try the Issue as to inquire of Damages, and the Plaintiff cannot enter a Nolle prosequi on the Non assumpsit, because both the Pleas go to the whole, and both must be determined before the Plaintiff can have Judgment; of which Opinion was the Court, and set aside the Inquiry.

A Writ of Inquiry imperfect discharged.

*Fenner versus Williamson.*

*Cooke.*

**A** Motion to stay Proceedings for Irregularity because the Process was served with Notice to appear, on the 21st. of January, which was on a Monday, whereas it should have been on the 20th. tho' Sunday, that being the real Return-day, a Rule to shew Cause was granted, and afterwards made absolute upon hearing Counsel on both Sides.

Proceedings stayed because Process served with Notice to appear the Day after the Return. Ante 92. *Allop v. Bagges.* Post. *Green v. Turner.*

*Watkins.* Post. 100. *Loyd v. Beeson,* and *Cort v. Turner.*

*Paul versus Gledhill.*

*Thomson.*

**A** Motion to set aside a Writ of Inquiry, because executed above a Year after Interlocutory Judgment, and a Term's Notice not given; the Court set aside the Inquiry, C c

A Term's Notice of Inquiry where Judgment is signed above a Year.

Ante 4. & contra; and ante 66. *Buckson v. Fellow.*

*Hil. 7 Geo. II.* because a Term's Notice should have been given; and so in  
*V. Reg. Cur' Pasf.* all Cases of Notices where there have not been any Pro-  
*13 Geo. II.* ceedings within a Year, a Term's Notice must be given.  
*reg. 2.*

*Senhouse against Barnes.*

*Cooke.*

*The Charges of a Witness allowed to be paid, tho' rejected by the Judge of Assize.*  
**A** Motion that the Prothonotary might not allow the Charge of one Trowell going from London to Carlisle to be a Witness, because the Judge would not suffer him to be examined, being of Opinion that he was not a material Evidence; but the Plaintiff having sworn that he was a material one, and the Attorney likewise swearing that he was advised by his Counsel that Trowell was a material Witness, the Court ordered the Charge of that Witness to be allowed.

*Green versus Watkins.*

*Borret.*

*In Notices to appear, the Day of the Return must be inserted, tho' it happen to be on a Sunday.*  
*Stat. 5 Geo. II. cap. 27. Post. 100.*  
*Lloyd v. Bechoe. Ante 97.*  
*Jeune and Wilkenson. Ante 92.*  
*Allop v. Buggey.*  
**A** Motion to stay Proceedings, because the Process which was returnable in Octab' Hil', was served with Notice to appear on the 21st. of January, which was Monday; it was insisted upon by the Plaintiff's Counsel, that the Sunday being no Law-Day, it was impossible for the Defendant to enter his Appearance on that Day, and therefore it must be understood that the Legislature intended that Notice should be delivered to appear on such a Day, when the Defendant could enter his Appearance; the Court took Time to consider, and soon after declared, that Notice ought to be given to appear on the Eloth-Day, whether Sunday or not, the Act of Parliament of the Fifth of his present Majesty expressly directing the same, and for that reason Proceedings were staid.

*Roberts v. Downes, an Attorney.*

*Borret.*

*East. 7 Geo. II. 1734.*

*Motion to respice Trial must be made two Days before Trial.*  
**O**N a Motion to put off a Trial, it was declared by the Court, That all Motions for respiting Trials should be made two Days at least before the Day of Trial, and

and in the present Case, the Motion being made but one Day before the Trial, it was denied.

*East. 7 Geo. II.*  
*Post. Agar v.*  
*Hill, Trin.*

1734. Ante 81. *Walberry v. Lister.*

*Bennet against Sampson.*

*Cooke.*

A Motion to quash a Capias ad respondendum, because the Writ was tested the 13th. of February, being no Day in Bank; a Rule Nisi was granted, and on shewing Cause the Writ was ordered to be quashed.

Writ quashed being tested out of Term.

*Hannaford against Holman.*

*Borret.*

A Motion to set aside a Writ of Inquiry for Uncertainty in the Notice; the Notice given was, that the Writ would be executed at a certain Hour, (mentioned in the Notice) or as soon after as the Sheriff could attend; the Court unanimously agreed that this Notice was irregular for the Uncertainty, and granted a Rule to shew Cause, which was afterwards made absolute.

To set aside an Inquiry for want of Certainty in the Notice.  
*Post. Squire v. Almond, Hil.*  
1734.  
*Lamarque v. Newman, Trin.* 1736.

*Right against Wrong, in Ejectment.*

*Cooke.*

A Motion was made in this Cause that the Tenant (who refused to authorize his Landlord to defend for him) might be obliged to make a Defence, upon the Landlord's giving Security to indemnify him, or that the Landlord might be made a Defendant instead of the Tenant in Possession, in order that the Title might be tried; but the Court refused to grant the Motion, but enlarged the Time for Appearance.

Motion that Landlord may appear for Tenant without Consent, giving Security.  
*Ante 73.*  
*Webb v. London.*

But now see the Stat. 11 Geo. II. cap. 19.

*Arnold against Thomson.*

*Borret.*

IN Trespals for chasing the Plaintiff's Sheep, whereby ten Ewes and ten Lambs were greatly damaged, a Verdict was found for the Plaintiff, but Damages under 40s. and no Certificate; the Question was, whether the Plaintiff should have full Costs? Per Cur' this is a Damage done to a Personal Chattel, therefore the Plaintiff is intitled to his full Costs.

Full Costs in Trespals for chasing Plaintiff's Sheep.  
*Ante Smith v. Long, f. 2.*  
*Bett v. Nichol, and Rother v. Belling, f. 24.*  
*Parke v. Dwyer, f. 49.*

*Loyd*

*Eggt. 7 Geo. II.*

Notice to appear on Sunday being the Return-day, good.

Ante 98.  
*Green v. Watkins.*

Ante 97.  
*Jenner v. Williamson.*

*Loyd against Beefton.*

**P**ROCESS was served on the Defendant with Notice to appear on the Sunday, being the Efloin-day, which the Court held good Notice, and discharged the Rule to shew Cause.

*Cort against Turner.**Borret.*

Process served without any Notice to appear, void. Vide *Loyd v. Beefton*, the preceding Case.

**T**HE Defendant having been served with a Copy of Process, without any Notice thereunder pursuant to the Act of 5 Geo. II. he moved the Court to stay the Proceedings for that Irregularity; and a Rule to shew Cause was granted, which was afterwards made absolute.

*Waddington against Fitch.**Cooke.*

No Bail-Bond on an Attachment out of Chancery. Ante 14.  
*Field v. Walsford.*

**D**EBT on a Sheriff's Bond taken on an Attachment out of Chancery; upon a Demurrer, the Question was, Whether a Sheriff could take such a Bond or not? The Court gave Judgment for the Defendant, and said that a Sheriff cannot take a Bail-Bond upon any Attachment for a Contempt.

*Halsal against Wedgwood.**Cooke.*

Declaration in Ejectment left on the Premises, Tenant refusing to take it and threatening to shoot the Person who served it, and held a good Delivery.

**A** Motion for Judgment in Ejectment, on the Demise of Lord Leigh; it appeared by the Affidavit that the Deponent tendered the Declaration to the Tenant in Possession, but he refused to receive it, and threatened to shoot him, upon which the Deponent, having acquainted the Tenant with the Contents of the Declaration and the Subscription, threw the Declaration on the Ground and left it; and by all the Judges it was held to be a good Service.



East. 7 Geo. II.

*Williams versus Jones and another.*

**A** Motion made and a Rule to shew Cause, why a Non-suit at the Sittings on a Trial by Proviso should not be set aside; it was urged by the Plaintiff that the Defendant could not carry down the Cause by Proviso till a full Term intervened after Issue joined; but the Court said the standing Practice was, to make up the Record by Proviso, upon one Default being made, the next Term after Issue joined, and discharged the Rule to shew Cause.

Nonf. it on Trial by Proviso. Ante, *Jesus College v. Vaughan*, fo. 63. Post. *Swale v. Leaver*, Mich. 9 Geo. II. *Jones v. Hergest*, Mich. 8 Geo. II.

*Note*; It was likewise objected that the Plaintiff was out of Court by suffering a Nonsuit, and so could not now be admitted to move the Court, *Sed vide post Swale versus Leaver*, Mich. 9 Geo. II. where this Point is settled otherwise.

*Walthoe against Harrison an Attorney.*

*Thomson.*

**A** Motion after Trial, to amend the Jurata in the Record of Nisi prius by making the Return in the Award of the Habeas Corpora a Day certain instead of a general Return; the Court ordered the Plaintiff to shew Cause; afterwards the Rule was discharged, the Court saying that it need not be amended, for it is already good, the same being remedied by the Statutes of Jeofail; but on further Consideration the Judges gave their Opinion seriatim, and declared that the Jurata might be amended by the Habeas Corpora, and ordered the same accordingly.

Leave to amend the Jurata by making the Habeas Corpora returnable at a Day certain.

Stat. 4 Geo. II. c. 26. 5 Geo. II. c. 32 H. VIII. c. 30. 18 El. c. 14. 16 Car. II.

c. 8. 4 & 5 Ann. c. 16. Carth. 506. Cro. Car. 275. 1 Dawd. Abr. 334. 335.

*Adderley against Dixie.*

*Cooke.*

Trin. 7 & 8 Geo. II.

**A** Motion in the Treasury by Mr. Eadnal, Agent for the Defendant's Attorney, for Leave to plead a Tender, on a Declaration delivered in the Country the Day before the Effoin Day of this Term; the Judges were unanimously of Opinion

Declaration delivered to the Attorney in the Country, not good.

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nion

*Trin. 7 & 8 Geo. II.*  
*Mountstephen v. Templer, fo. 94.*  
*Evans v. Black, Mich. 1734.*  
*Taylor v. Lawton, Mich. 1735.*

union, that a Declaration delivered in the Country to an Attorney appearing for the Defendant was not good, but it should have been delivered to the Agent in Town, and they made a Rule for the Plaintiff to shew Cause why Proceedings on such Declaration should not be stayed, and why he should not deliver a new Declaration. On the Plaintiff's shewing Cause it was ordered by Consent of the Agents on both Sides, that the Rule should be discharged, and the Defendant should be at Liberty to plead a Tender as of Easter Term last.

### *Rye against Crossman.*

*Cooke.*

Verdict set aside, no Issue being joined by the Plaintiff.

**A** Motion to set aside a Verdict on two Objections: First, Because it did not appear by the Copy of the Issue delivered, that the Plaintiff had joined Issue with the Defendant, by putting himself on the Country. And Secondly, for a Clearance in that Respect between the Issue and the Record of Nisi prius, the Record being made Right.

The Court granted a Rule to shew Cause, and afterwards, on hearing Counsel on both Sides, the Verdict was set aside, the Defendant having made no Defence on the Trial, he relying upon the above Objections; but by Consent the Cause was decided to be tried the Sitting after Term.

### *Pigott, Widow, versus Charlewood.*

*Cooke.*

Attorney's Privilege. *Ante, Gardin v. Sheers, fo. 60.*  
*Griffith v. Brown, fo. 64.*  
*Post. Morley v. Grub, fo. 104.*

**T**HE Defendant having been taken in Execution, while he was attending the Execution of a Writ of Inquiry, the Court was moved that he might be discharged, which was ordered accordingly upon hearing Counsel on both Sides.

*Newman v. Harrison, East. 10 Geo. II.*

### *Blackhall against Gould.*

Motion to set aside Process, the Attorney's Name being not put to it. *Post. Morley v. Johnson, Trin. 1734.*  
*See Supra. 13 Geo. II. c. 12.*

**A** Motion to stay Proceedings because the Attorney's Name was not put to the Copy of the Process served upon the Defendant, as the Act of 2 Geo. II. cap. 23. for the better Regulation of Attornies and Solicitors, required; the Court denied the Motion, because it did not concern the Parties so as to make the Process void, but only the Attorney who used it out, who might be censured for not pursuing the Direction of the Act.

*Smith*

*Trin. 7 & 8  
Geo. II.*

*Smith against Wintle.*

*Barri.*

**A** Motion to stay Proceedings, no Writ being regularly served, the Court granted a Rule to shew Cause, and on shewing Cause it appeared by the Plaintiff's Affidavit, that the Defendant absconded and was hard to be met with, and therefore the Plaintiff watched him, and saw him go into a House and shut the Inner Door after him; upon which the Plaintiff followed him, and thrust the Copy of the Writ into the Room after him, which the Court held to be good Service, and discharged the Rule for shewing Cause.

*What Service good where Defendant absconded.*

*Hill, Esq; against Jefferyes, Esq;*

*Thomson.*

**A** Motion for a Trial at Bar, the Action being for Criminal Conversation, the Damages being laid in the Declaration to a large Sum of Money, and a great Number of Witnesses to be examined; the Court granted a Rule to shew Cause, which was afterwards made absolute.

*Motion for Trial at Bar in an Action for a Criminal Conversation. The like Motion cited to have been*

*granted in the King's Bench, in the Case of Sir John Germain.*

*Smith against Roe.*

*Thomson.*

**A** Motion for Leave to plead Antient Demesne, but denied, because such Plea is to the Jurisdiction of the Court, and ought to be pleaded within the first four Days of the Term after the Declaration delivered or left in the Office, as other Pleas in Abatement.

*Plea of Antient Demesne ought to be pleaded within the first four Days. Ante 43, 63.*

*Irwin versus Goldsmith.*

**O**NE Ingram a Quaker was returned on a Jury, and refusing to be sworn was fined 40s. on the Stat. 3 Geo. II. cap. 25. by the Lord Chief Justice Eyre; it was now moved in Court and insisted, that by the Statute of 7 & 8 W. III. cap. 34. sec. 6. a Quaker could not serve upon any Jury, and the last Act says, if they don't appear, they shall be

*A Motion to discharge a Quaker's Fine for not serving on a Jury.*

*Trin.* 7 & 8  
*Geo.* II.

4 *Mod.* 269.

be fined, whereas this Quaker did appear and offered to take his Affirmation, but that could not be taken, because the last Act directs the Jury to be sworn. Cur' Advisar'; the Court afterwards delivered their Opinions seriatim in relation to this Matter, when it was held by Eyre, Chief Justice, Denton and Reeves, Justices, (Mr. Justice Fortescue having some Doubt) that Quakers are not exempt by any Act of Parliament from serving on Juries, and therefore if they will not serve they must be fined; but it was said a Quaker might be excused, by a proper Application to the Sessions, from being named as one of the Jury.

### *Gower versus Heath.*

*Cooke.*

Motion to  
set aside his  
own Verdict  
for Smallness  
of Damages.

AN Action for scandalous Words spoken of the Plaintiff by the Defendant, Issue and Verdict for the Plaintiff, but the Jury having given but 1s. Damage, the Plaintiff now moved for a new Trial; the Court refused to grant a Rule, there being no Precedent of a Verdict being set aside by Reason of the Smallness of Damages, though frequent for excessive Damages.

### *Morley against Grub.*

*Thomson.*

Attorney arrested by giving Security, waived his Privilege.  
*Ante* 60, 64, 102.  
*Post. Newman v. Harrison, East.* 11 *Geo.* II.

UPON a Motion on the Behalf of Mr. Forrest to be discharged out of Custody, he having been taken on an Execution as he was returning from Mr. Thomson's Office, where he had been attending upon the Variation of Costs; in this Cause a Rule Nisi was granted; but upon shewing Cause it appeared that Mr. Forrest had left a Pledge in the Bailiff's Hands. The Court held that he had thereby submitted to the Arrest and waived any Benefit of his Privilege, and therefore they discharged the Rule which had been made for shewing Cause.

### *Swain against Girdler, Serjeant at Law.*

*Borret.*

Whether a Serjeant shall be sued by Bill or Original.

AN Action brought by Bill against the Defendant for Work done, the Defendant pleads in Abatement that he ought to be sued by Original, and not by Bill; on this a Demurrer was joined; and after many Arguments and Cases cited, the Court said the Case of a Serjeant and Prothonotary's Clerk are upon the same Foot, neither of them being bound to Personal Attendance, as Prothonotaries  
and

and Attornies are, so that he ought to have been sued by Original; and therefore the Court gave Judgment for the Defendant that the Bill should abate.

*Trin. 7 & 8 Geo. II.*

1 *Keb. 440.*

2 *Lev. 129.*

*Hardress 317. Mich. 10 W. III. 316. Baker against Swindel. Rastel 178. 2 Mod. 296, 298. Bro. Abr. 21. 1 Sid. 64. 1 Cro. 84.*

*Agar against Hill.*

*Cooke.*

A Motion to put off a Trial, but denied, because all such Motions are to be made at least two Days before the Day of Trial, and this Motion was made only the Day before.

No Motion to be made for putting off Trial unless made two

Days before Day of Trial. *Roberts v. Downs, fo. 98. Welberry v. Lister, fo. 81.*

*Adkin against Worthington, an Attorney.*

*Cooke.*

THE Defendant Demurred to the Declaration, and for Cause shew'd that the Plaintiff, in setting out the Preamble to the Bill, had not mentioned the Nature of the Action; upon the Argument, the Court declared that the Cause of Action was sufficiently set forth in the Bill, and therefore no Matter if it was omitted in the Preamble; quod constat clare non opus est verificare, and therefore gave Judgment for the Plaintiff upon the Demurrer.

Nature of Action omitted in the Preamble of the Bill, yet good. *Post. Sidebottom v. Frith, East. 9 Geo. II.*

Note; *Darker against Ward, Trin. 1734. Cooke*, Upon the same Point the Court resolved accordingly.

*Jamet against Voyer.*

*Cooke.*

A Motion to stay Proceedings, the Writ being returnable on a Sunday, and a Copy thereof served with Notice to appear upon the Monday after, whereas the Effoin Day was on the Sunday; the Defendant did not complain to the Court of this Irregularity, till after Notice of a Declaration was served, tho' before Judgment signed, which it was insisted was too late; but the Court said, since he came before Judgment signed, it was soon enough; for till serving of the Notice of the Declaration he could not tell

Notice on Process to be for Effoin-day tho' Sunday.

See ante 92, 97, 89, 100. *Chalklen v. Johnson, Hil. 8 Geo. II.*

Irregularity in the Notice on Process may be complained of, any Time before Judgment.

*Post Grimes v. Clever, Mich. 11 Geo. II.*

*T* *rin.* 7 & 8 *Geo.* II. whether the Plaintiff would proceed upon such irregular Service of the Process; and therefore Proceedings were stayed.

*Cooke and another against Sankey.*

*Borret.*

Bail in Trespass for entering Plaintiff's Ground and taking away his Hop-Poles.

*Stat.* 12 *Geo.* I. c. 29.

A Motion for a Common Appearance, the Plaintiff's Affidavit set forth, that the Defendant entered the Plaintiff's Hop-Ground, and did take and carry away several Thousands of Hop-Poles to his Damage 20l. The Court said the Act of Parliament did not distinguish Actions, but that the Plaintiff might hold to Bail in Trespass, as well as in any other Action.

*Eason and his Wife against Wilkins and his Wife.*

*Cooke.*

Issue amended.

1 *Roll.* 210. *Post Walpole v. Robinson,* *Mic.* 11 *Geo.* I.

A Motion made in Easter Term last to arrest the Judgment in Assault and Battery; there had been two several Pleas of son Assault, and Issue was joined in the last, but left out in the first. The Court granted a Rule to shew Cause, which was now discharged on hearing the Plaintiff's Counsel, because it appears to be the Clerk's Mistake, and amendable by the Statutes of Jeofail, and besides, as the Issue is joined in the latter Plea, that may also have Reference to the First.

Note; *Lyne* against *Green*, the like Resolution in an Action on two Bonds, Issue joined as to one Bond and not in the other.

*Morley against Johnson.*

Process delivered without Filazer's Name.

*Blackball v. Gould, Trin.* 1734. fo. 102. *Stat.* 2 *Geo.* II. c. 23.

*Borret.*

A Motion to stay Proceedings upon Process delivered without the Filazer's Name being put thereto. Cur', the Act of Parliament does not require it, so no Rule was granted.

*Camp, qui tam, &c. against Gale.*

No Motion in arrest of Judgment the last Day of the Term without Notice.

*Cooke.*

A Motion in Arrest of Judgment the last Day of the Term without Notice of the Motion, and a Rule to shew Cause was granted; but the Court said, that no Motion

in Arrest of Judgment should hereafter be made, without Notice, on the last Day of the Term.

*Trin. 7 & 8  
Geo. II.*

*Eglesfield against Anderson.*

*Cooke.*

A Rule obtained to shew Cause why a Prohibition should not be granted, but upon shewing Cause it was insisted, that no authentick Copy of the Libel was produced, which the Court said ought to be done, and it must be proved by Affidavit to be a true Copy, and for Want of such Affidavit, the Rule was discharged.

A true Copy of the Libel ought to be produced upon Motion for a Prohibition.

*Langdon against Vinicombe and others.*

*Cooke.*

AN Action upon the Case on several Promises; some of the Defendants pleaded Non Assumpsit, and others let Judgment go by Default; the Defendants, who pleaded, had a Verdict. It was moved that the Defendants should have Costs on the Verdict, the Plea going to all the Declaration, the Court ordered Costs to be taxed accordingly on the Verdict.

Costs on Verdict for Defendants, tho' some let Judgment go by Default.  
*1 Lev. 63.  
Porter v. Harris.*

*Harding against Greensmith, on the Demise of Mary Baker, Widow.*

*Borret.*

A Motion for Judgment in Ejectment, upon Affidavit that the Declaration was delivered to the Wife of A. B. and to B. T. and to each of them, and swears that both or one of them is Tenant in Possession; the Motion was denied for Incertainty in the Affidavit.

Motion for Judgment in Ejectment denied for Incertainty in the Affidavit.

Note; *Birbeck against Hughes, Hil. 1737.* the like Motion denied for Incertainty in the Affidavit, which was *That the Deponent did serve A. B. or C. his Wife.*

*Mic. 8 Geo. II.**Thredder against Traviss.**Cooke.**Mich. 8 Geo. II.*

Notice to ap-  
pear the Be-  
ginning of  
next Term,  
Time to ap-  
pear enlarged.

A Motion was made the 28th. of October this Term, for Judgment in Ejectment on a Proceeding pursuant to the late Act of Parliament, Stat. 4 Geo. II. c. 28. the Notice was to appear the Beginning of the then next Term. The Court said the Beginning of the Term was uncertain, and therefore gave the Tenant till the 6th. of November to appear and plead.

*Hewitt against Powel.**Cooke.*

*Ha' Corp'* re-  
turnable on a  
*Sunday*, Com-  
mitment the  
next Day.  
*The King v.*  
*Haryes, Hil.*  
*8 Geo. II.*

A N Habeas Corpus was sued out, to bring the Defendant into Court, returnable in one Month after St. Michael, which was on a Sunday. The Court said the Defendant might be brought up within four Days after the Return; the next Day the Defendant was committed.

*Day's Case, the same Term.**Cooke.*

A Prisoner  
brought up  
before the Re-  
turn of the  
*Ha' Corp'*; the  
Court would  
not receive  
him.

W illiam Day was brought up the 4th. of November by Habeas Corpus, directed to the Sheriff of the County of Somerset, returnable the last Day of the Term; the Court would not receive him before the Return of the Writ.

*Carruthers against Lamb.**Cooke.*

Costs in Tref-  
pals for tear-  
ing and spoil-  
ing the Plain-  
tiff's Clothes.  
Ante 24, 49.  
Vide post.  
*Denny v.*  
*Wigg, Mich.*  
*10 Geo. II.*

I N an Action of Trespass for an Assault, and for tearing and spoiling the Clothes of the Plaintiff with which he was then clothed; a Verdict was found for the Plaintiff and 1 d. Damages, and 40 s. Costs given by the Jury. It was questioned by the Prothonotary what Costs he should allow the Plaintiff, therefore a Motion was made in the Treasury for the Direction of the Court, who all agreed that full Costs should be allowed, altho' no Certificate was given by the Judge who tried the Cause; for it is not an Action



*Mich. 8 Geo. II.**Jones against Hergeft in Ejectment on the Demise of John Thomas.**Cooke.*

Motion by Defendant, to set aside Nonsuit, for not confessing Lease, Entry and Ouster.  
*Post Sewall v. Leaver, Mic. 1735.*

**A** Motion by the Defendant to set aside a Nonsuit, for not confessing Lease, Entry and Ouster, on account of a Variance between the Issue delivered and the Record of Nisi prius. For the Plaintiff it was objected that the Cause was at an End by the Nonsuit; the Court said if the Defendant had confessed Lease, Entry and Ouster, that would not have been making a Defence, so as to have hindered him from taking Advantage of the Variance; but as in this Case the Possession would be altered without trying the Title, they set aside the Nonsuit, but upon Payment of Costs.

*Misaubin against Costa.**Cooke.*

Motion to set aside a Judgment on a Nonsuit, signed after the Plaintiff's Death.

**O**N the Trial of this Cause the Plaintiff was nonsuited, but died before the Day in Bank, and the Defendant signed his Judgment after the Plaintiff's Death; and now it was moved to set aside this Judgment, suggesting that it was not helped by the Statute of the 18th of Car. 2. cap. 8. which enacts, That the Death of either Party, between Verdict and Judgment, shall not be alledged for Error, if Judgment on such Verdict be entered within two Terms after such Verdict; this being a Nonsuit, the Question was, Whether the Act does not extend to Nonsuits as well as Verdicts; the Court declared that this was not an Irregularity, but Error, and to be reversed by Writ of Error only, and therefore denied the Motion.

*Cope's Case.**Cooke.*

Prisoner remanded for not paying the Gaoler's Fees.

**I**Saac Cope brought up by Habeas Corpus, returnable on the Writ of St. Martin, at his own Instance, but refusing to pay the Gaoler's Fees, the Court remanded him.

*Gorman against Boyle.*

*Cooke.*

**A** Motion to set aside a Verdict because only eight Days Notice of Trial was given, whereas the Defendant's Habitation is in Ireland; the Court said if the Defendant's Habitation be forty Miles from London, he must have fourteen Days Notice of Trial let him live where he will, and therefore set aside the Verdict.

Fourteen Days Notice of Trial, the Defendant living in Ireland.  
*Reg. Cur' 1654. sec. 21.*

*Gray against Sanders.*

*Borret.*

Hil. 8 Geo. II.

**T**HE Plaintiff having entered an Appearance for the Defendant according to the late Statute, filed a Declaration against him, and gave a Rule to plead, and some Days after served the Defendant with Notice of the Declaration; the Court held that the Rule was irregular, for it should not have been given till after the Notice was served, the Declaration being well delivered, from the Time of Notice only.

No Rule to plead till Notice of the Declaration.  
*Ante 99. Law v. Revel.*

*Mathews against Wheat.*

*Cooke.*

**A**FTER Time given to rejoin Issuably, the Party may demur if he will; the Reason of giving Time, is that the Party may consider whether he will demur or not.

Time to rejoin Issuably, the Party may Demur.

*Coffar*

Hil. 8 Geo. II.

*Coffar and his Wife against Standen.**Thomson.*

Venue not  
changed after  
Plea pleaded.  
Ante 33.  
*Carter*  
*v. Dormer,*  
*Sabor v. Pott,*

57.

*Treasure v. Wright*, 57. *Pott Ball v. Young*, Hil. 9 Geo. II. See *Lucas v. Rudd*, Mich. 10 Geo. II.

**A** Motion to change the Venue, and a Rule granted to shew Cause; upon shewing Cause it appeared, that the Defendant had pleaded before he applied to change the Venue; the Rule was discharged for that the Venue is not to be changed after the Defendant has pleaded.

*Newman against Butterworth.**Thomson.*

Proceedings  
stayed on an  
Action upon  
the Recogni-  
zance, a Writ  
of Error be-  
ing depend-  
ing.  
Ante 24.  
*Covert*  
*v. Allen,*  
*et contra.*

**A** Motion to stay Proceedings against Bail upon the Recognizance till the Writ of Error be determined; the usual Practice has been, if an Action be brought against the Principal on the Judgment, the Plaintiff may proceed to Judgment, tho' a Writ of Error be depending; but this Case being against Bail, if the Plaintiff should obtain Judgment, the Bail could not render the Principal; and therefore Proceedings were staid.

*Note*; In *Easter Term 1735*, in a Cause, *Clark against Baker*, the like Resolution was made.

*The King against Haryes.**Cooke.*

Sheriff to  
bring in the  
Body on an  
Attachment  
for a Con-  
tempt, re-  
turnable the  
Day before  
the Term.  
Ante 108.  
*Powell's Case.*

**A**N Attachment on a Contempt, returnable Wednesday after the Octave of St. Hillary, which was the Day before the Term.

A Motion in the Treasury for the Sheriff to bring in the Body, upon a Return, that he had taken the Body; it was insisted that tho' the Return of the Attachment was before the first Day of the Term, yet the Sheriff shall return his Writ any Day within four Days after. The Court made a Rule for the Sheriff to bring in the Body. This Matter was moved again, and a Rule to shew Cause why the Attachment should not be quashed, there being no such Return.

Return. The Rule enlarged to next Term, and then the Writ was quash'd. *Hil. 8 Geo. II.*

*Note ; Rooke against Norton, Trin. 10 Geo. II. Cooke, The like Resolution on an Attachment of Privilege.*

*Hamond against Woolmer.*

*Thomson.*

A Motion to set aside Costs of a Nonsuit taxed upon a Rule of Court; on a Trial at Nisi prius, a Verdict was given for the Plaintiff, subject to the Opinion of the Lord Chief Justice on a Case then made, and if his Opinion should be for the Defendant, then Defendant was to have the Costs of a Nonsuit. His Lordship's Opinion being for the Defendant, Costs of a Nonsuit were taxed upon the Rule, and after this the Defendant died, and the Costs demanded of the Plaintiff by the Defendant's Executor: It was debated whether an Executor shall be intitled to, and can make a proper Demand of these Costs, it being insisted upon, that that Matter ought to be reciprocal, for if the Plaintiff had died, his Executor would not have been obliged to pay these Costs.

*Costs taxed upon a Rule, to be paid to an Executor, after Defendant's Death.*

The Court were of a contrary Opinion, and said the Executor was intitled to Costs, and granted an Attachment against the Plaintiff for Nonpayment thereof, but ordered the same not to Issue, if the Costs were paid in three Days.

*Squire the Elder against Almond.*

*Cooke.*

A Motion to set aside a Writ of Inquiry for the Uncertainty of the Place in the Notice, which was that the Writ would be executed at the Sheriff's Office in Northampton, whereas it should have been at such a Place, being the Sheriff's Office, for the Defendant might not know nor be able to find out where the Sheriff's Office was kept, and the Notice likewise expressed, that the same would be executed between the Hours of Ten and Two, whereas it should not have exceeded two Hours; the Inquiry for both these Reasons was set aside, but no Costs were ordered to be paid.

*Inquiry set aside for want of sufficient Certainty in the Notice. Ante, 99. Hanaford v. Holman. Post La Marque v. Newman, Trin. 10 Geo. II.*

Hil. 8 Geo. II.

*Price and Selby against Lewis and others.**Cooke.*

Need not be fifteen Days between the Tette and Return of a Scire facias. *Lutwich 24. Ante 18, 34.*

**S** Scire Facias against Bass, Plea in Abatement that there are not fifteen Days between the Tette and Return of each of the Scire Facias's; on Demurrer Judgment for the Plaintiff, that the Defendants answer over, for there need not be fifteen Days between the Tette and Return of each of the Scire Facias's, but only fifteen Days between the Tette of the first Scire Facias and the Return of the second Scire Facias.

*Strickland, Bart. against Hodgson.**Cooke.*

Declaration against a Prisoner in a County Gaol, need not be filed before the Delivery.

**A** Motion to stay Proceedings upon a Declaration delivered to a Prisoner in a County Gaol, because such Declaration was not first entered in the Prothonotary's Office, and on hearing Counsel on both Sides, the Court said there was neither Act of Parliament, nor Rule of Court, that did oblige the filing such Declaration before the Delivery thereof to the Prisoner, but that it was sufficient to file such Declaration in the Office any Time before the giving a Rule to appear and plead.

*Stat. 4 & 5 W. & M. cap. 21.* **Note;** The Entering the Declaration with the Prothonotary, is only necessary where the Prisoner is in the *Fleet*.

*Peirson against Ives.**Cooke.*

Can't add to a Plea after Replication or Demurrer.

**A** Motion for Leave to add the general Issue to a Plea of Non assumpsit infra sex annos, and this moved after a Demurrer to the Plea.

The Court discharged the Rule to shew Cause, for they said a Defendant cannot add to his Plea after a Replication or Demurrer.

*Roe against Doe.*

**I**N Ejectment, a Motion for Judgment, the Tenant acknowledged he received the Declaration from his Father, and held by the Court a good Delivery, and Rule for Judgment ordered.

Good Service of a Declaration delivered to the Tenant's Father, Tenant acknowledging the Receipt. Ante 75.

*Note ; Snape against Hunt, Hil. 8 Geo. II.* The like Resolution on a Delivery to the Daughter, and the Tenants confessing the Receipt of it.

*Chalken against Fanson.*

*Cooke.*

**A** Copy of Process served with Notice to appear at the Return, being the 23d of October, whereas the same should have been the Return-Day, which was the Sunday before ; upon a Motion to stay the Proceedings, the Court granted a Rule to shew Cause. In Easter Term following, the Rule was discharged, upon hearing Counsel on both Sides, the Defendant being too late in making Application, for he did not complain to the Court till after Judgment signed.

Process with Notice to appear on the Appearance-Day. Ante 105. *Jamet v. Foyer.* *Smith v. Feaks,* 69. *Morse v. Farnham,*

*Pepper v. Bowden,* 92. Post *Grimes v. Clever,* Mich. 11 Geo. II.

*Freeman and his Wife against Cannon and others.*

**I**N Dower upon a Motion to set aside a Grand Cape, because the Summons was not proclaimed fourteen Days before the Return, according to the Statute 31 Eliz. cap. 3. sec. 2.

Motion to set aside the Grand Cape, for want of sufficient Summons.

The Court ordered a Rule to shew Cause ; and no Defence being made, the Rule was made absolute on Affidavit of Service.

*Noble*

*Eaft. 8 Geo. II.**Noble againft Lancafter.*

Eafter, 8 Geo. II. 1735.

What Coſts  
on an Inquiry  
after Trial,  
and a Replea-  
der had been  
ordered.

**I**N Trover, Non aſſumpſit, Iſſue thereon, and a Verdict for the Plaintiff pleaded, but the Iſſue being immaterial, Judgment was ſet aſide, a Repleader ordered, and for want of a Plea interlocutory Judgment was ſigned, and a Writ of Inquiry executed; and now the Queſtion was, if the Coſts of the Trial ſhould be allowed in the Taxation; the Court directed that ſuch Coſts ſhould not be allowed, for that in this Caſe there were Faults on both Sides.

*Danes againſt Monſay.**Thomſon.*

Arbitrators  
can't proceed  
after they  
have named  
an Umpire.  
*Stat. 9 & 10  
W. 3. c. 15.*

**A** Motion for an Attachment for not performing an Umpirage, and granted Niſi. It is ſettled that Arbitrators cannot proceed on a Reference, after they have once named an Umpire, for then their Authority ceases, tho' the Time for making their award is not expired.

*Jones verſus Wilkinſon.**Thomſon.*

Judgment  
held good tho'  
the Defen-  
dant's Attor-  
ney was not  
called on for a  
Plea.  
*Ante, 80.  
Morris  
v. Parry.*

**U**PON a Motion to ſet aſide an interlocutory Judgment, on the Defendant's Attorney's Affidavit, that he was not called on for a Plea, a Rule to ſhew Cauſe was granted. On ſhewing Cauſe, it appeared that the Defendant's Appearance was entered by the Plaintiff, purſuant to the Statute, and that Notice of a Declaration being filed, had been delivered to the Defendant; the Court declared that in this Caſe the Plaintiff was not obliged to take Notice of any Attorney that ſhould afterwards appear to be concerned, and held the Judgment to be regularly ſigned.

*Blik against Halpenn and his Wife.*

*Borret.*

**A** Motion in the Treasury to discharge the Defendant's Wife, taken on *Hefne* Process without her Husband. A married Woman discharged. Cro. Car. 178. Roll. Abr. 583. 1 Sid. 395. In B. R. Clarkson v. Washington and Wife. Trin. 9 Geo. I. Ante fo. 52.  
Curia: She shall be discharged on a Common Appearance, for otherwise it might be in the Power of a Husband to set up Ham Actions against his Wife, and keep her in continual Imprisonment; but in case both Husband and Wife had been taken, then both should be held till Bail be given for both, for otherwise a Woman might marry a Prisoner, and thereby might defraud her Creditors.

*Cowper against Sayer.*

*Cooke.*

**A** Motion for an Attachment, and Rule Nisi, against Hodgson an Attorney, for commencing a Suit in his own Name after he was forejudged; on shewing Cause, the Rule was made absolute, and an Attachment granted against him. An Attachment against an Attorney for bringing an Action in his own Name after he was forejudged. See after The King v. Hodgson, Trin. 1735.

*Maddox against Paston.*

*Cooke.*

**S**IX Pounds brought into Court on the common Rule, and the Plaintiff recovered but five Pounds; by the Words of the Rule, the Plaintiff was to have the Money out of Court; but the Defendant moved to have the six Pounds paid in Part of his own Costs, and granted. Money paid into Court returned to Defendant in Part of his Costs. Ante fo. 5, 54. Lane v. Wilkinson, Trin. 13 Geo. II.

*Tomlinson against White.*

*Cooke.*

**I**N Trespass Quare clausum fregit, and for breaking a Door, the Plaintiff had laid Special Damages in his Declaration; the Jury found the Special Matter for the Defendant, and Damages in Trespass. No more Costs than Damages in Trespass. and Denny v. Wigg, Mich. 10 Geo. II. Stat. 22 & 23 Car. II. cap. 9. Parks v. Davis, Mich. 1728. Beck v. Nichols, Trin. 1733. Rosier v. Bolting, Trin. 9 Geo. I. Carruthers v. Lamb, Mich. 1734.



*Reg. 8 Geo. II.* and the Rest for the Plaintiff, and Damages five Shillings; and now the Defendant moved that no more Costs than Damages should be allowed, and a Rule Nisi was granted, which was afterwards made absolute, upon hearing Counsel on both Sides, because the special Matter being found for the Defendant, the Rest was a Trespass against the Plaintiff's Freehold, the Title of which might have come in Question; and therefore it was requisite that the Judge should have certified in Order to intitle the Plaintiff to full Costs.

*Smith against Hayward.*

*Borret.*

Two Sets of Words, Part not Actionable, Verdict set aside.  
*Reg. Mich. 1654. sec. 24.*

**A**N Action for Words, v. z. He, meaning the Plaintiff, hath committed Sodomy upon my Child, and other Words, this Child can hang you; a general Verdict and 100 l. Damages.

On a Motion in Arrest of Judgment, the Verdict being General, and the last Words not Actionable, the Court let aside the Verdict, and ordered a Venire facias de novo.

*Clarke against Tayler.*

*Cooke.*

Attorney's Bill not to be taxed after Inquiry executed.

**T**HE Court being moved to tax the Plaintiff's Bill of Costs, a Rule Nisi was granted, but upon shewing Cause it appeared that an Action had been depending some Time, and a Writ of Inquiry executed, therefore the Court discharged the Rule, declaring that the Defendant came too late, after an Inquiry executed, and the Damages ascertained.

*Note.* The Court seemed of Opinion that it would be too late to apply for taxing a Bill of Costs after Judgment signed, but that not being the Case before them, no absolute Determination was given as to that Point.

*Williams against Evan Jones and Edward Jones.*

*Cooke.*

Postea amended by the Judge's Certificate.

**A** Verdict for the Plaintiff generally; Lord Chief Justice certified, that the Defendant Edward Jones was found Not guilty, but that the Associate had by Mistake taken a Verdict against both; ordered the Return of the Postea to be amended,

amended, by Indorsing on the Postea, that Edward Jones is not <sup>Trin. 8 & 9</sup> ~~Gilty.~~ <sup>Geo. II.</sup>

*Grimston against Grimston, on the Demise of Lord Gower, and another.*

*Borret.*

SIX Declarations in Ejectment, delivered to six Tenants, <sup>Six Issues in Ejectment put into one.</sup> one Appearance and one Plea for all jointly, six several Issues delivered and paid for; Motion to put them into one, all the Declarations being alike. Mr. Justice Denton ordered it to be so; the Plaintiff dissatisfied with the Order moved the Court, but the Court confirmed the Judge's Order, the constant Practice being to make but one Cause.

*Stratford versus Marshall.*

*Borret.*

A Motion to put off a Trial till Michaelmas Term next, <sup>Trial put off from Easter to Michaelmas Term.</sup> and granted after a Rule to shew Cause, tho' it was declared the common Practice was only to put off Trials from one Term to another. <sup>Ante fo. 45.</sup>

*Ward against Colclough.*

*Cooke.*

Trin. 8 & 9 Geo. II.

THE Court denied Leave to change the Venue on a Bill of Exchange or promissory Note, for these are in the Nature of Specialties. <sup>Venue not changed on a Bill of Exchange or promissory Note.</sup>

Note; *Viggers against Viggers*, Trin. 10 Geo. II. *Cooke*; The Court made the like Resolution, and so it was said to be ruled in the King's Bench. <sup>Vide ante fo. 36.</sup>

*Byer against Whitaker and others.*

*Thomson.*

IN this Cause a Motion was made in Easter Term 1735, <sup>Process of the Common Pleas served in the County Palatine of Lancaster.</sup> to stay Proceedings on a Testatum Capias, a Copy of which had been served on the Defendant in the Coun-

*Trin. 8 & 9 Geo. II.*  
 to Palatine of Lancaster, without taking out of a Mandate thereon from the Chancellor of the County Palatine, and a Rule to shew Cause being granted, the Matter now came on to be debated, and Counsel being heard on both Sides, the Court held that the Process was well served, and pursuant to the Statute of 5 Geo. II. cap. 27, and therefore the Rule to shew Cause was discharged.

*Goodright against Hoblyn.*

*Borret.*

*Countermand of Trial may be given either in Town or Country. Ante fo. 48.*  
**I**N Pledment, a Motion for Costs for not going on to Trial, a Countermand was given in the Country; but it was objected, that such Countermand was not good, for that it ought to have been given in Town. The Court declared that all Notices of Trial must be given in Town, but Countermands may be given either in Town or Country.

*Tomkin against Perry.*

*Cooke.*

*Plea in Abatement without Affidavit of the Truth of the Plea. L'elefantain v. Mings, Ante fo. 38.*  
**A**Plea in Abatement, viz. That there is no Addition of Estate, Degree or Mystery to the Defendant's Name, was pleaded after a special Imparance, but no Affidavit made of the Truth of such Plea, and for want thereof Judgment signed; and now upon Motion to set aside the Judgment, it was insisted that there is no Occasion for an Affidavit, because the Truth of the Plea appears by the Declaration; but afterwards the Parties consenting that the Judgment should be set aside, upon the Defendant's pleading an issuable Plea to the Action, and taking short Notice of Trial, and also that the Costs of each Side should attend the Event of the Suit, no direct Opinion was given by the Court in the principal Point.

*Cotton against Perks, Widow.*

*Thomson.*

*Money tendered and refused, yet Defendant to pay the Costs, Plaintiff not refusing to attend and take his Costs.*  
**A** Rule obtained for Payment of five Pounds into Court, the Money had been tendered, but was refused, and on that Refusal brought into Court, and Costs taxed; the Defendant

dant insisted that no Costs ought to be paid, the Plaintiff having refused the Money. The Counsel for the Defendant insisted, that the refusing the Money, when tendered had put the Defendant to the Charge of paying it into Court and pleading, therefore the Plaintiff ought to pay Costs from the Time of the Refusal; but the Court overruled this, for tho' the Defendant tendered the Money, he could not tender the Costs before they were taxed.

*Trin. 8 & 9  
Geo. II.*

*Foster Plaintiff, Pollington and his Wife and others,  
Deforceants.*

*Borret.*

**I**T was moved to amend a Fine by striking out the Words *A Fine amended by striking out superfluous Words.* in America in partibus Transmarinis; this fine was of Lands and Tenements in the Island of Antigua, otherwise Antigua in Paroch' *Stæ. Mariæ, Yslington,* in the County of *Middlesex,* and was past in the Year 1714. Application had been made to the Master of the Rolls, and an Order made by his Honour for the Amendment, which Order was set aside by my Lord Chancellor. After great Debate in this Cause (a Writ of Error being depending) the Judges were unanimously of Opinion that this Court had the only Cognizance of Fines, and ordered the same to be amended.

*A Fine amended by striking out superfluous Words.  
Ante 9, 17, 52.  
Post. 127.*

*The King against Hodgson.*

*Cooke.*

**A** Recognizance to answer Interrogatories on a Contempt, and Interrogatories filed; but the Defendant before his Examination applied to the Court to be discharged on Payment of the Costs of the Complainant only, which was granted, and the Recognizance discharged; in the Original Cause a Writ of Error being depending, the Complaint against the Defendant was for practising in his own Name as an Attorney, being forejudged the Court.

*Defendant discharged of a Contempt on submitting to pay the Costs of the Complainant.*

Mich. 9 Geo. II.

*Coates and others against Smith and Midgley.**Cooke.*Leave to plead  
double in Pro-  
hibition.

**I**N Prohibition, a Motion to plead Double, viz. That J.C. &c. named in the Declaration at a Meeting, &c. did not make up a true and just Account &c. And that the Account mentioned in the Declaration, was not examined, approved and allowed by the Vestry; which was granted upon hearing Counsel on both Sides.

*Taylor against Sharman.**Cooke.*Judgment set  
aside for want  
of sufficient  
Notice of the  
Declaration.  
Ante 63, 68.

**A** Motion to let aside a Judgment for want of sufficient Notice of the Declaration, the Notice was a Declaration is left against you in the Office, &c. for 15 l. due by Note under your Hand, without saying whether in Debt or Case, for an Action of Debt might be maintained on such a Note, so that the Nature of the Action did not appear; and for that Reason the Judgment was set aside upon hearing Counsel on both Sides.

*Tidmarsh against Protter.**Cooke.*

Mich. 9 Geo. II.

Motion to  
discharge a  
Prisoner, be-  
cause the 2 l.  
4 d. was not  
continued af-  
ter Plaintiff's  
Death.

**A** Motion by a Prisoner for his Discharge, the Payment of 2 s. 4 d. per Week being discontinued on the Plaintiff's Death; the Act of Parliament does not make any Provision where the Plaintiff dies, so it is Casus omissus; however the Court made a Rule for the Plaintiff's Executor to shew Cause why the Defendant should not be discharged, and no Cause being shewn, the Court on Affidavit of Service made the Rule absolute for the Defendant's Discharge.

*Knight against Winter.*

*Thomson.*

**M**OTION to set aside Execution against the Bail, it appeared that the Defendant was rendered, and the same entered in the Judge's Book, but not in the Bail-Piece as usual, the same having been taken away by the Plaintiff's Attorney, so that the Render could not be entered thereon; the Court held the Render to be good, and ordered the Executions to be set aside with Costs.

*A Redditi entered in the Judges Book, good. Ante 53. Post Long v. Woodyer, Hil. 9 Geo. II.*

*Arne against Neeler.*

*Cooke.*

**A** Motion for an Attachment against the Under Sheriff of Middlesex, for not returning a Capias upon a Peremptory Rule for that Purpose, the Affidavit of Notice was to Mr. Benson, who acts, and for many Years last past has acted as Under Sheriff; it was objected that by the Affidavit Mr. Benson appears to be only an acting Under Sheriff, and not the real Under Sheriff, and that Personal Notice ought to be given to the Real Under Sheriff; the Court granted an Attachment against the Sheriff, and said Mr. Benson was well known to be the acting Under Sheriff.

*Attachment against the Sheriff, on a Rule served upon Affidavit of Notice on one who was not Under Sheriff, but acted as such. Franklin v. Nash, Ante 87.*

*Taylor versus Lawson.*

*Borret.*

**A** Plea was delivered in the Country, and afterwards Judgment signed for want of a Plea, which the Court held to be regular, however they set aside the same on the Defendant's pleading, and consenting that the Costs should attend the Event of the Trial.

*Plea delivered in the Country. Ante 94, 101, 109.*

*Phillips*

*Mich. 9 Geo. II.**Phillips against Fowler.**Cooke.*

Motion to set  
aside a Ver-  
dict for a  
Misbehaviour  
of the Jury.

**U**PON a Motion to set aside a Verdict for a Misbehaviour of the Jury, it was objected that the Defendant had already moved in Arrest of Judgment, and after this could not be admitted to move to set aside the Verdict; but the Court over-ruled this Objection, because the Fact of the Jury's Misbehaviour came lately to Knowledge, and granted a Rule to shew Cause; and the Defendant's Counsel cited many Cases, where Motions had been made to set aside Verdicts after Motion in Arrest of Judgment.

*Craven against Aislaby.**Thomson.*

Judgment  
signed by  
Mistake,  
waived with-  
out Motion.

**I**N this Cause Judgment had been signed too soon, and it being by Mistake, the Prothonotary struck the same out of his Book; it was said that this had been often done, and held good.

*Elwood against Elwood.**Cooke.*

Attachment  
not grantable  
on a Quaker's  
Affirmation.

**A** Quaker's Affirmation of the Execution of an Award or any other Thing relating to a Motion, for an Attachment, is not to be received or read.

*Swale an Attorney against Leaver.**Thomson.*

Nonfuit at the  
Sittings set a-  
side, for want  
of fourteen  
Days notice of  
Trial by Pro-  
viso.

Ante 63.

*Williams v.*

*Jones, 101.*

*Jones v. Her-*

*gest, 110.*

*Regala Cur' Mich. 1654. sec. 21.*

**A** Motion to set aside a Nonfuit obtained at the Sittings for Middlesex, upon a Record by Proviso for want of fourteen Days Notice of Trial; it was insisted for the Plaintiff, that tho' he was an Attorney, and lived in Town, and supposed to be present in Court, yet the Defendant living above forty Miles from London, each Party ought to have fourteen Days Notice of Trial; the Defendant objected that

the

the Plaintiff having suffered a Nonsuit, was out of Court, <sup>Hil. 9 Geo. II.</sup> and could not now be heard, but the Court over-ruled the Objections, for here the Question is about the Regularity of the Nonsuit, and if that Objection should be allowed, it would be Exceptio ejusdem rei cujus petitur Dissolutio; and they likewise held, that as the Plaintiff must have been obliged to give the Defendant fourteen Days notice, so likewise the Plaintiff ought to have had the same Notice, and set aside the Nonsuit.

*Bray against Booth.*

*Borret.*

**N**ON Pros signed for want of a Replication to a Plea of Tender where the Money was not brought into Court, afterwards Judgment signed for want of a Plea. <sup>Judgment held good, tho' signed after a Non Pros.</sup> Upon Motion to set aside the Judgment, it was objected that the Non pros was good till set aside, and therefore Judgment irregular, but the Court over-ruled that Objection, and said the Non pros was irregular, and therefore of it's self void. Upon this Motion the Prothonotaries Mr. Thomson and Mr. Borret both affirmed that the Judgment was good, and that the Non pros being irregular, there was no Occasion to move the Court to set it aside.

*Austin against King and his Wife.*

Hil. 9 Geo. II.

**T**HE Defendants were brought into Court in order to be discharged; the Question was, Whether the Husband and his Wife should be allowed 2s. 4d. a Week each, or whether, there being but one Judgment, one 2s. 4d. should not be sufficient. <sup>A Man and his Wife Prisoners, allowed 2s. 4d. each, tho' but one Judgment.</sup> The Court were of Opinion that the Act of Parliament extended to the Person, and not to the Cause, and therefore ordered 2s. 4d. per Week to each.

*Ware against Rackett.*

*Cooke.*

**T**HE Court was moved for an Attachment against the Plaintiff, upon the Defendant's Affidavit, that he was arrested and held to Bail, no Affidavit being filed of the Debt, and <sup>Arrest, Affidavit not filed.</sup>

K k

a Rule



*Mich. 9 Geo. II.**Phillips against Fowler.**Cooke.*

Motion to set  
aside a Ver-  
dict for a  
Misbehaviour  
of the Jury.

**U**PON a Motion to set aside a Verdict for a Misbehaviour of the Jury, it was objected that the Defendant had already moved in Arrest of Judgment, and after this could not be admitted to move to set aside the Verdict; but the Court over-ruled this Objection, because the Fact of the Jury's Misbehaviour came lately to Knowledge, and granted a Rule to shew Cause; and the Defendant's Counsel cited many Cases, where Motions had been made to set aside Verdicts after Motion in Arrest of Judgment.

*Craven against Aislaby.**Thomson.*

Judgment  
signed by  
Mistake,  
waived with-  
out Motion.

**I**N this Cause Judgment had been signed too soon, and it being by Mistake, the Prothonotary struck the same out of his Book; it was said that this had been often done, and held good.

*Elwood against Elwood.**Cooke.*

Attachment  
not grantable  
on a Quaker's  
Affirmation.

**A** Quaker's Affirmation of the Execution of an Award or any other Thing relating to a Motion, for an Attachment, is not to be received or read.

*Swale an Attorney against Leaver.**Thomson.*

Nonfuit at the  
Sittings set a-  
side, for want  
of fourteen  
Days notice of  
Trial by Pro-  
viso.

Ante 63.

*Williams v.**Jones, 101.**Jones v. Her-**gest, 110.**Regula Cur' Mich. 1654. sec. 21.*

**A** Motion to set aside a Nonfuit obtained at the Sittings for Middlesex, upon a Record by Proviso for want of fourteen Days Notice of Trial; it was insisted for the Plaintiff, that tho' he was an Attorney, and lived in Town, and supposed to be present in Court, yet the Defendant living above forty Miles from London, each Party ought to have fourteen Days Notice of Trial; the Defendant objected that

the

cation ingrossed, but not sealed, and neither the Roll carried in, or the Writs filed; upon reading the Deeds and Affidavit of Notice to the respective Parties, the Recovery was ordered to be completed, and the Rolls and Writs to be filed. *Hil. 9 Geo. II.*

*Clapham v. Bacon, Trin. 2 Car. I.* A Recovery agreed to be suffered by A. B. and Richard C. the Writ of Entry was sued out in the Name of John C. instead of Richard, but ordered to be amended.

*Mich. 4 Car. I.* A Warrant to suffer a Recovery by W. Reynolds and Hester his Wife; the Serjeant had certified that the Warrant was given by W. R. and Margaret his Wife, the Mititur and Transcript made and the Recovery entered accordingly, but ordered to be amended.

*Thurban v. Pantry, Mich. 8 Car. I.* A Recovery suffered by A. B. and C. his Wife, but the Name of the Wife totally omitted, ordered by the Court to be amended.

*Doncaster v. Campion, East. 16 Car. I.* A Recovery was suffered, but the Writ of Seisin was made returnable the same Return as the Writ of Entry. The Return ordered to be amended.

*Bunce & al v. Greenway & al, Mich. 4 W. & M.* The Writ of Entry was made returnable Tres Mich. 33 Car. II. which was before the Date of the Deed, to make a Tenant to the Precipe: And ordered to be amended by making the Writ returnable Crastin' Animarum.

*Wattry v. Fodrell, Mich. 5 W. & M. and Warkbouse v. Watts, Mich. 5 W. & M.* The like Amendments were order'd to be made.

*Loes & al Demandants, v. Young, Tenant, Frampton Vouchers, Trin. 12 W. III. Tempest.* Upon the Certificates of the Custos Brevium, Mr. Prothonotary Tempest, and the Clerk of the Warrants of this Court, that the Writ of Entry and Writ of Seisin between the Parties had been duly issued, and also that the Recovery in this Cause was taken at the Bar of this Court of the Term of St. Michael in the eighth Year of King Charles the First, all the Parties in the said Recovery named then and there appearing in their own Persons, It was order'd that the said Recovery should be entered of Record of that same Term of St. Michael, upon the 134th Roll among the Rolls of the Pleas of Land inrolled in that Term. *Recovery ordered to be entered of Record above 60 Years after it was taken at Bar.*  
*Mackdonnel*

*Mil. 9 Geo. II.*

*Mackdonnel against Gunter and others.*

*Thomson.*

A Declaration reduced from four Counts to two, and Attorney to pay Costs.

**A** Motion to reduce a long Declaration of four Counts into two, there being no Necessity for more; and the Court ordered the same, and that the Attorney should pay the Costs.

The same Term *Morgan* against *Hill*, The like Rule, but no Costs.

*Olorenshaw against Stanyforth.*

*Cooke.*

Leave to take out Execution where the Writ of Error abated by the Death of the Chief Justice. *1 Sid. 168.* *1 Keb. 658.*

**O**N a Rule to shew Cause why the Plaintiff should not be at Liberty to take out Execution upon the Judgment obtained, notwithstanding a Writ of Error brought, the same being ineffectual by the Death of Lord Chief Justice Eyre; the Rule made absolute, the Lord Chief Justice not having signed the Return of the Writ of Error.

*Cranburn v. Quennel, Hil. 9 Geo. II. and Middleton v. Gardner, The like Rules.*

*Carter an Attorney against Smith.*

*Cooke.*

Judgment on a Warrant of Attorney taken of a Prisoner set aside, no Attorney for the Defendant being by. (a) But where the Defendant himself is an Attorney, the Warrant is good, tho' no other Attorney be present. Ante 94.

**A** Warrant of Attorney taken by the Plaintiff to confess a Judgment to himself held not good, the Defendant being in Custody, and no other (a) Attorney present; whereupon the Judgment and Execution thereon were set aside, and Restitution ordered.

*Note*; In this Cause the Defendant was held to be in Custody, tho' the Officer left the Defendant some Time, whilst the Plaintiff *Carter* got the Warrant of Attorney from the Defendant.

Judgment set aside where the Declaration was delivered to the Defendant, not being able to find his Attorney. Ante 50, 84.

*Cooke.*

*Hutching against Lillyman.*

**A** Motion to set aside a Judgment; the Case was, The Plaintiff's Attorney not being able to find the Defendant's Attorney, delivered the Declaration to the Defendant himself, and for want of a Plea signed Judgment; and tho' the

the

the Defendant's Attorney owned the Receipt of the Declaration from his Client, yet the Judgment was set aside, for that the Declaration was delivered to the Defendant himself, and not received by his Attorney till after the Essoin-Day of this Term.

*Craftell against Cocker.*

*Cooke.*

**A** Motion to change the Venue from Middlesex to Durham; the Court refused to change the Venue to a County Palatine, and it was then said that the Court does not use to change the Venue to any County where the Assizes are held but once a Year.

*East. 9 Geo. II.*

*be changed into a County Palatine.*

*Ante 36, 91.*

*Ling against Woodyer.*

*Cooke.*

**O**N Motion, it was ordered that the particular Hour of the Day on which the Defendant surrendered himself in Discharge of his Bail, should be specified in the Entry of the Surrender.

*The Time of Surrender to be specified in the Entry.*

*Ante 53, 58, 123.*

*Post Williams v. Pay.*

*Crockhay against Martyn.*

*Cooke.*

*East. 9 Geo. II. 1736.*

**T**HE Plaintiff being dead, the Defendant moved to have 10l. out of Court; but it was objected thereto, that it belonged to the Plaintiff's Executor; on Debate and Counsel heard on both Sides, a Rule was made that the Plaintiff's Executor should bring a new Action, and in the mean Time all Things should stay.

*Motion for Money out of Court, Plaintiff being dead.*

*Humfryes against Daniel.*

*Cooke.*

**I**N an Action of Debt on a Judgment pending a Writ of Error, the Court held that the Plaintiff may take out Execution on the last Judgment notwithstanding the Writ of Error.

*Pending a Writ of Error Plaintiff may bring Debt on the Judgment, and proceed to Execution, unless stayed by Motion.*

*Tri. 10 Geo. II.* **Error**, unless the Defendant moves to stay the Proceedings.

*Sidebotham against Frith an Attorney.*

Demurrer for *Borret.*

an insufficient  
Memorandum  
to the Decla-  
tion on a Bill  
filed against  
an Attorney.  
Ante 105.

**T**HE Defendant demurred, for that the Plaintiff in the Memorandum of the Entry of the Bill had not shewn what was the Nature of the Action, as Debt or Case. The Court over-ruled this Objection, and said the Nature of the Action was sufficiently set forth in the Declaration,

*Southouse against Pye.*

No Motion to  
set aside Judg-  
ment the last  
Day of Term,  
if Defendant  
could have  
applied soon-  
er.

*Cooke.*

**N**O Motion to set aside Judgment the last Day of the Term, unless it does appear that the Defendant could not sooner apply.

*Cooke against Holgate.*

*Thomson.*

Trin. 10 Geo. II.

The bringing  
many Goods  
into Court de-  
nied, but a  
Rule for  
Plaintiff to  
shew Cause.  
Ante 59.

**M**OVED to bring many Household Goods into Court; if it had been any particular Thing they would have granted it, but they would not incumber the Court with many Goods; but made a Rule to shew Cause why the Plaintiff should not consent to accept the Goods and his Costs.

*Watkinson v. Cockshot, Hil. 6 Geo. II. Borret, A Motion to bring Goods into Court denied.*

*Humfreys against Mitchel.*

*Cooke.*

Proceedings  
stayed, Copy  
served vary-  
ing from the  
original Pro-  
cess.

**M**OVED to stay Proceedings, the Process being Dated the 16th of June, but the Copy was Dated the 26th of June.

Cur', It is not a true Copy of the Process, therefore let *Tri. 10 Gen. II.*  
Proceedings be stayed.

*Green against Bell.*

*Thomson.*

**A** Motion to amend a Declaration by adding two Counts, and after hearing Counsel on both Sides, granted on Payment of Costs; and it was settled to be the Course of the Court, that the Plaintiff may, at any Time before the End of the second Term, have Leave to amend his Declaration by adding new Counts, but not afterwards.

*May amend Declaration by adding new Counts any time before the End of the second Term. Mich. 1654. sec. 17.*

*Huckle against Ambrose.*

*Borret.*

**M**OVED to Vacate a Render, because the Defendant would not pay the Fees, which were not demanded till after the Render made. 2 Keb. 2. It is not a complete Surrender till it be entered on Record. Ordered that the Entry of the Render in the Judge's Book be struck out.

*To Vacate a Render at a Judge's Chamber, because the Defendant refused to pay the Fees.*

*Cartwright against Gardner.*

*Thomson.*

**A** View from the Assizes, and the whole Entry on the Record since the Issue actually made; moved to strike out the whole Entry relating to the View, upon an Allegation that the Plaintiff could not proceed thereon, and cited a Case between Bratcher and Cotton, where the same was granted in Hillary Term last in Mr. Cooke's Office. The Court said such Rule was obtained by Surprise, and that such Alteration could not be made unless by some Entry to amend it by.

*Amendment of a Record by striking out the Entry of a View, there being nothing to amend by. Ante 76.*

*Weeks and his Wife against Robbins.*

*Cooke.*

**A** Motion to set aside Judgment, because the Writ was sued out at the Suit of the Plaintiff only, and so consequently no Foundation for the Action.

*Declaration at the Suit of Husband and Wife, can't be delivered on The a Process, at the Suit of the Husband only.*

*Trin. 10 Geo. II.* The Question was, Whether the Plaintiff might not deliver a Declaration at the Suit of himself and Wife, on a Writ at his own Suit only. On hearing Counsel on both Sides, the Court declared that no such Action could be maintained, unless there had been Process at both Plaintiff's and his Wife's Suit.

If the Plaintiff had sued out a Writ at the Suit of himself and Wife, he might have delivered a Declaration at his own Suit, as a Declaration by the Wy.

### *Welland against Funicall.*

Venue may be changed, tho' the Plaintiff be an Attorney, if he sues by Capias. Post *Girdler v. Matthews, Hil. 11 Geo. II. Mills v. Johnson, Mich. 10 Geo. II.*

*Cooke.*

A Motion to Change the Venue; the Plaintiff being an Attorney insisted on his Privilege as such; but it appearing that he sued the Defendant by Capias and not by Attachment, the Court declared he was not intitled to the Privilege of an Attorney, unless he claimed it properly; if he sues as a common Person, he must be treated as such.

### *Lord Griffin against Bugby.*

*Thomson.*

Venue not changed in *Scan. Mag.* Vide ante 36.

IN an Action of Scandalum Magnatum, on Motion to change the Venue, it was agreed by the whole Court to be the constant Practice to deny such Motion.

Note; Between Lord Stamford and Brown, *Trin. 1 Geo. I.* There was the like Resolution by the Court.

### *Phillips against Hedges.*

*Cooke.*

Attachment for Curfing the Chief Justice and Court on Service of Process.

A Motion for an Attachment against the Defendant for cursing the Chief Justice and Court on Service of Process; the Words were G-d D--n the Lord Reeves and the Court, and that he neither cared for him or them; and an Attachment was granted absolute, without any Rule to shew Cause, that being the constant Method for a Contempt of this Nature.

Mic. 10 Geo. II.

*Daverhill against Barret.*

Tender no If-  
suable Plea af-  
ter Time gi-  
ven to plead.  
*Whitall v.*  
*Green, Hil.*  
*8 Geo. II.*  
*Leaver v.*  
*Whitcher, Hil.*  
*10 Geo. II.*

*Thomson.*

Mich. 10 Geo. II.

**A** Motion to set aside Judgment, signed after Plea of Tender delivered; the Defendant was by Rule obliged to plead an Issuable Plea; a Tender is no Issuable Plea within the Meaning of this Rule; therefore the Judgment was held good.

*De Cerissay against O Brien.**Cooke.*

Motion to  
stay Proceed-  
ings against  
an Ambassa-  
dor's Servant,  
Stat. 7 Ann.  
c. 12.  
Ante 65.

**A** Motion to stay Proceedings against the Defendant, he being a Courier in the Service of Sir Thomas Geraldino the Spanish Envoy; the Plaintiff alleged the Defendant was a Trader; on the other Side it was said, that the Circumstance of the Trade was so minute that it could not amount to a Trading, and that the Defendant could not be a Bankrupt under that Circumstance; but it was replied, that a probable Cause will make a Bankrupt; and it was further alleged, that the Defendant was no Domestick Servant, being a Courier, and paid for each Journey, and neither living in the House, nor receiving Wages by the Year, and that being Registered in the Sheriffs Office was not material. The Court discharged the Rule to stay Proceedings.

In the Case of Toms and Hammond, Mich. 7 Geo. II. the Certificate was that the Defendant was a menial Servant to the Mecklenburgh Envoy, and held that a menial Servant was not within the Act, the Words of the Statute being Domestick, or Domestick Servant, who as such, are employed in and about the House, on Household Affairs only.

*Mills against Johnson an Attorney.**Thomson.*

Attorney no  
Privilege to  
change the  
Venue where  
he is Defen-  
dant.

**A** Motion was made to change the Venue, the Defendant insisting that being an Attorney he was only to be sued in Middlesex, where his Business required his Attendance; a Rule was granted to shew Cause; but the Court on shew-  
ing



*Mic. 10 Geo. II.* had been discharged for want of proceeding to Judgment; but if it had been for want of proceeding after Judgment to charge the Defendant in Execution, then it would have been otherwise, and he would have been intitled to his Discharge.

*See Clerk v. Venner, infra.*

*Bland who as well, &c. against Fetherstone.*

*Borret.*

*Leave to compound on a Qui tam.* **A** Motion for Leave to compound for the several Sums for which the Action was brought, and granted by the Court, with the Consent of Mr. Serjeant Bootle for the Plaintiff.

*Note*; A Rule for the same purpose, without any Consent therein, was produced, which was made in the King's Bench in *Trin. Term* in the 6th Year of King *Geo. II.* *Dell who as well, &c. against Wyat.*

*Lucas against Rudd.*

*Cooke.*

*Venue changed, the Plea was given before the Day of shewing Cause.* **A** Rule to shew Cause why the Venue should not be changed, and after this Rule made and before the Day of shewing Cause, the Defendant pleaded, which it was insisted on, was a Waiving of his Rule; yet the Court made the Rule absolute, seeing his first Application to the Court to change the Venue, was made before the Plea pleaded.

*Ante 33, 57, 112, 126.*

*Clarke against Venner.*

*Cooke.*

*Prisoner discharged for want of proceeding to Judgment, may afterwards be taken in Execution, but where Defendant is discharged by Superfedeas for want of being charged in Execution, he shall be totally discharged, and can't be afterwards taken in Execution.* **A** Motion to discharge the Defendant out of Execution, who was before discharged for want of the Plaintiff's proceeding to Judgment; afterwards the Plaintiff proceeded to Judgment, and took the Defendant in Execution. Mr. Justice Denton said he had consulted with the Justices of the King's Bench, and one of the Judges told him that the constant Practice of that Court was, that where a Defendant is discharged for want of proceeding to Judgment, the Plaintiff may afterwards proceed to Judgment and take him in Execution thereon, and he shall not be discharged. But if the Plaintiff had proceeded to Judgment, and the Defendant

*Wright v. Kirwell, supra.*

dant was discharged for want of being charged in Execution, *Mic. 10 Geo. II.* he should be totally discharged, and cannot after that be charged in Execution.

*Whitehead against Shaw, and the same against Whitfield.*

*Borret.*

ON a Motion to set aside a Judgment, it was declared, that where Application is made to a Judge for Time to plead, and a Summons granted, after the Rule to plead is out, such Summons must be look'd upon as obtained by Imposition on the Judge, and consequently the Plaintiff may proceed notwithstanding such Summons.

*A Summons, after Rule to plead out, no Stay of Proceedings. Ottiswell, v. Death, Trin. 10 & 11 Geo. II.*

*Denny versus Wigg.*

*Cooke.*

ON a Motion that the Court would direct the Prothonotary to Tax full Costs, in an Action for the following Words, spoke of the Plaintiff in his Trade of a Grocer, *viz.* You sell your Goods by false Weight, you sell but fifteen Ounces to the Pound, and I never had of you more than fifteen Ounces for a Pound instead of sixteen: By the Speaking of which Words the Plaintiff is not only hurt in his good Name, but several Persons, to wit, R. B. and T. H. who before were wont to buy Goods of the Plaintiff in his Trade, have since left of Dealing with him. At the Trial a general Verdict was found for the Plaintiff and 10s. Damages.

*Full Costs, in Slander, tho' Damages under 40 s.*

It was insisted for the Plaintiff that the Special Damages took this Case out of the Statute; for this is no more than a Special Action upon the Case for the Special Damages by the Means of speaking of those Words, and the rather because no other Action could be brought for the Special Damages, for in Order to introduce that, the Words that occasioned it, must be declared upon as they are in the present Case; and to support this, the following Cases were cited, *Cro. Car. 140, 163, 307. Salk. 206. Anderson versus Burton, Trin. 5 Geo. I. in B. R. Trespass for putting infected Cattle into the Plaintiff's Close, per quod the Plaintiff's Cattle became infected; Verdict for the Plaintiff, and 5 s. Damages; and ruled not to be within the Statute, three Justices against Eyre Justice; and the Plaintiff had full Costs. And Carter versus Fish, and Philips versus Fish, Mich. 12 Geo. I.*

*21 Jac. I. cap. 16.*

N n

for

*Hil. 10 Geo. II.*

*for Words* you stole my Hen, by means of speaking which Words the Plaintiff was carried before a Justice and detained, &c. Verdict for the Plaintiff and 1 s. Damages, and ruled by all the Court of B. R. that both Plaintiffs should have full Costs upon the Authority of Cro. Car. 163. which was said by Raymond, Chief Justice, to be a Case in Point.

For the Defendant it was said, that the Distinction was when the Words would or would not bear an Action of themselves; in the last Case the Plaintiff should have full Costs, but not in the former, and that it had been lately so adjudged in B. R.

Curia: There is no Foundation for such a Distinction; let the Plaintiff have full Costs.

### *Bracher versus Cotton.*

*Cooke.**Hil. 10 Geo. II.*

No Costs on a  
Remanet or a  
Reference.

THE Cause at the first Assizes was made a Remanet, at the Second a Nisi, at the Third the Cause was refer'd, and at the Fourth a Verdict was found for the Plaintiff.

It was now moved for the Plaintiff; that the Costs of the first and third Assizes might be allowed; but the Motion was denied. The Prothonotaries all declared that no Costs could be allowed for the Remanet or the Reference, there being no Proceedings thereon, and that this is the Practice, except on a Reference, there be an Agreement that the Costs should attend the Event of it.

### *Eyles, Bart. versus Smart.*

*Thomson.*

What Costs  
for a Special  
Jury on the  
Stat. 3 Geo. II.

A Motion for Directions to the Prothonotary in taxing Costs for a Special Jury struck in this Cause by the Prothonotary, on the Stat. 3 Geo. II. cap. 25. for the better regulating of Juries, whereby it is enacted, That the Party applying for a Special Jury shall pay the Fees for striking such Jury, and shall not be allowed it on taxing the Costs. The Court declared they would not extend the Act further than to the striking; the other reasonable Costs relating to the Special

Special Jury are to be paid and allowed to the Party obtaining the Verdict in such Case. *Hil. 10 Geo. II.*

*Leaver versus Whicher.*

*Cooke.*

**I**N this Cause a regular Judgment was set aside, and the Defendant had Leave to plead an issuable Plea, but he pleaded the Statute of Limitations.

Defendant not allowed to plead the Statute of Limitations after a regular Judgment set aside.

The Plaintiff moved to set aside that Plea, which was granted; for where the Defendant has had an Opportunity of pleading the Statute, but lets Judgment go by Default, and afterwards applies to set aside that Judgment, he shall not be let in, but upon Payment of Costs and pleading the general Issue.

*Note*; Where a Plea of Justification was absolutely necessary to try the Merits, and the Plaintiff had not been delayed of a Trial, the Court have admitted the Defendant to make such Defence, tho' the Judgment set aside was regular.

And the Court in a like Case admitted an Administrator to plead *Plene administravit* generally, which was look'd upon as the general Issue. *Cruise v. Williams, Hil. 13 Geo. II.*

*Sibson versus Niven, Widow,*

*Cooke.*

**A**N Action for Words touching the Murder of the Defendant's Husband; the Defendant moved the Court for an Imparllance, because the Plaintiff was indicted for the Murder in the Admiralty Court, the Fact being committed upon the High Seas, and alledged that if this Cause be tried in this Court, the Strength of the King's Evidence would be discovered, and that this Action was only an Artifice of the Plaintiff's, to discover what Evidence the Prosecutor had against him.

Imparllance granted in Slander, Defendant being Indicted.

On great Debate, the Court granted an Imparllance till next Term.

*King's*

Ea. 10 Geo. II.

*King's Case.**Cooke.*

Attachment  
against Sher-  
iffs for not  
bringing up a  
Prisoner.

Stat. 31 Car.  
II. cap. 2.

Ante fo. 8.

Edmund's  
Case.

**A** Motion for an Attachment against the Sheriffs of Bristol, for not bringing up the Defendant on a Habeas Corpus. It appeared that seven Guineas had been tendered to the Sheriffs, which was more than was due by the Statute, at 1 s. per Mile, but they refused to take it; and therefore the Court ordered an Attachment against them.

*Note*; The Sheriffs afterwards agreed to bring a *Habeas Corpus* at their own Expence, and pay the Defendant his Costs.

*Mendes versus Woolfe.**Cooke.*

Prisoner al-  
lowed 2 s. 4 d.  
per Week,  
from each  
Plaintiff.

**T**HE Plaintiff desired to be excused from allowing the Prisoner 2 s. 4 d. per Week, he having already an Allowance of 2 s. 4 d. per Week at another Plaintiff's Suit. This being a new Point, the Court took Time to consider of it, and afterwards gave their Opinion, that the Defendant should be allowed 2 s. 4 d. per Week from every Plaintiff that should insist on his being detained in Execution.

*Newman versus Harrison, an Attorney.**Cooke.*

Ea. 10 Geo. II.

Attorney at-  
tending a  
Judge, taken  
in Execution,  
discharged.

Ante Garden  
and Sheers,  
60.

Piggot and  
Charwood,  
102.

Griffith and  
Brown, 64.  
Merly and  
Gruh, 104.

**T**HE Defendant had been summoned to attend a Judge of this Court, and was taken in Execution while he was attending in order to wait upon the Judge; the Plaintiff produced an Affidavit, that the Defendant owned he was then at Leisure, and accordingly then went with the Plaintiff to a Coffee-house, and gave his Opinion in a Case that was then proposed to him; this Matter was in a great Measure denied by the Defendant's Affidavit; and it appearing to be a Contrivance of the Plaintiff, to seduce the Defendant from attending on his Business, and make him liable to be taken in Execution; the Court was of Opinion, that it was still a Violation of the Privilege allowed to Attornies, and discharged the Defendant.

*Dawson against Garth.*

*Borret.*

THE Defendant had obtained a Judge's Order for Time to plead, but not pleading within the Time limited by the Order, the Plaintiff signed Judgment.

It was objected that no Rule to plead was given; but the Court said that the Judge having given Time to plead, there was no Occasion for a Rule, so the Judgment was held regular.

A Rule to plead not necessary, where a Judge has given Time to plead.

*Hunt against Puckmore.*

*Borret.*

A Motion that the Defendant might be at Liberty to withdraw his Demurrer, and to rejoin issuably to the Plaintiff's Replication; a Rule Nisi was made; on shewing Cause it was objected, that the Plaintiff had lost a Trial; but on the other hand it appeared that the Defendant being sued, as Heir to his Father, and having pleaded Riens per Discent, had by the Mistake of his Counsel, (as was owned) demurred to the Plaintiff's Replication, wherefore it was urged that it would be extremely hard upon him, if he should not have Leave to withdraw his Demurrer, and plead issuably; the Counsel confessing he had mistaken the Law, and Judgment (it was not doubted) would be given for the Plaintiff on the Demurrer, which would be to recover his whole Debt against the Defendant, tho' he had very little Assets descended to him; the Defendant was willing to satisfy the Plaintiff's Debt, so far as Assets had descended, which might be tried on the Issue of Riens per discent. The Court considering the Circumstances of the Case, granted the Motion on Payment of Costs, notwithstanding the Plaintiff had lost an Opportunity of trying his Cause. Hawkins for the Defendant; Wright for the Plaintiff.

Leave to withdraw a Demurrer and plead issuably on Payment of Costs, after Plaintiff had lost the Benefit of a Trial, being in Case of an Heir. *Sherlock v. Temple, Mich. 10 Geo. II.*

*Note;* It was mentioned again the next Day by Mr. Justice Denton, that this Rule was contrary to the established Practice of the Court, but it was answered that tho' the general Practice is, that after a Trial lost the Court will not permit a Demurrer to be withdrawn, yet this being so particular a Case, and the Circumstances therein so hard on the Defendant, it was more reasonable to let the Rule stand as pronounced, than to suffer so manifest an Injustice to fall on the Heir at Law.

Tri. 10 Geo. II.  


*Ottiwell against D'Ath.*

*Thomson.*

Trin. 19 Geo. II.

Summons for  
Time to  
plead, after  
Rule out no  
Stay of Pro-  
ceedings.

A Motion made to set aside a Judgment, which had been signed after a Summons for Time to plead taken out and served on the Plaintiff's Attorney, but it appearing that the Summons was taken out after the Expiration of the Rule to plead, the Court said that the Plaintiff was not obliged to take Notice thereof, and held the Judgment to be regular, but set the same aside on Payment of Costs, and pleading the general Issue.

*Goodtitle against Bennington, and others.*

*Cooke.*

What Bail in  
Error, after  
Verdict in E.  
judgment.

A Motion to oppose Justifying Bail in Error after Verdict in Ejectment; because by the Statute of 16 & 17 Car. II. cap. 8. after Verdict in Ejectment or Dower, the Plaintiff in Error must be bound to the Plaintiff in the Original Action.

The Clerk of the Errors certified that the Practice has been sometimes for the Plaintiff in Error to become bound, and sometimes to put in Bail, and oftner so than otherwise.

The Court said they would not prevent Justifying the Bail, however the Practice had been, and the Bail was accordingly justified.

Afterwards in Michaelmas Term the 11th Geo. II. a Motion was made for Leave to take out Execution, because the Plaintiffs in Error were not bound as the aforesaid Act directs; it was said that if the Defendant in Error thought he was intitled, and should proceed to Execution, it would be at his own Peril.

Postea, Mich.  
12 Geo. II.

Note; In the Case of *Doe v. Lushington*, Mich. 12 Geo. II. this Point was again debated, and it was then likewise held, that the Plaintiff in Error need not become bound.

*Atwood against Meredith.*

*Cooke.*

Mich. 11 Geo. II.

**A** Rule to shew Cause why Proceedings should not stay; a Copy of the Special Writ (in which the Damages were laid above 10 l.) having been served without any Notice to appear, and the Appearance entered by the Plaintiff for the Defendant, whereas it should have been served with Notice, tho' the Debt was above 10 l. for the Acts of the 12 Geo. I. and 5 Geo. II. in this Case are to be taken as one Statute; the Rule was made absolute.

Copy of Special Writ served without Notice to appear.  
*Linaker v. Hudson, a Case in B. R. ruled on this Motion.*

*Simpson against Duffield and his Wife, Administrators.*

*Cooke.*

**A** Rule to shew Cause why Judgment should not be set aside; it appeared the Rule to plead was given on Monday the 24th of October, and was out the Thursday after, Oyer was demanded on the Wednesday and given on the Thursday, and Judgment was signed on the Friday in the Afternoon. Curia; The Plaintiff's Attorney should have stayed and not signed it till Saturday in the Afternoon, for the Defendant shall have the same Time to plead after Oyer given, as he had when Oyer was demanded.

Defendant shall have the same Time after Oyer given, as was unexpired when Oyer was demanded.  
*Ante Hammond v. Horner, fo. 72. Littlehales v. Smith, ibid. Theobald v. Jackson, fo. 81. Blaxland v. Burgess, fo. 95.*

*Craven against Handley.*

*Berret.*

**A** Motion for Leave to enter a Judgment nunc pro tunc, and a Rule for Defendant's Executor to shew Cause; the Case was, the Defendant pleaded a bad Justification, the Plaintiff joined Issue, and a Verdict was for the Defendant; but the Issue being immaterial, a Rule was granted to stay the Entry of the Judgment on the Verdict, and for Leave for the Plaintiff to sign Judgment, the Trespass being confessed by the Plea; whilst this Matter was under the Consideration of the Court the Defendant died.

And now on shewing Cause for the Defendant's Executor it was insisted that the Plaintiff had delayed himself by joining

Leave granted to enter Judgment nunc pro tunc.  
*Crisp v. The Mayor of Barwick, 1 Sid. 162. Paullet v. Delander, Trin. 1 Geo. I. in B. R. Taylor v. Mathews, Hil. 2 Geo. I. in B. R. The Queen v.*

*Inhabitants of Hornsey, Hil. 11 Ann. B. R. Judgment entered 35 Years after the Party's Death.*



*Mic. 11 Geo. II.* joining in an immaterial Issue, and therefore ought to suffer, on the other Side it was said, that it would be very hard the Plaintiff should suffer, while the Court does a Thing for the Advancement of Justice.

Curia ; The Party must not suffer by the Court's taking Time to consider, let the Rule be made absolute.

*Brown against Godfrey.*

*Thomson.*

Judgment set aside because the Judge's summons was not first discharged.

**A** Judge's Summons for Time to plead, the Defendant's Attorney did not attend, the Plaintiff's Attorney signed Judgment ; but the Court set aside the Judgment, because the Plaintiff's Attorney should have first discharged the Summons.

Rivers and another against Plumbe, East 5 Geo. II. the like Resolution.

*Simpson against Warren.*

*Cooke.*

Motion by a Prisoner for a Superfedeas denied, Affidavit of the Debt having been made in B. R.

**A** Motion for a Superfedeas, because there is no Affidavit of the Debt in this Court, the Defendant being a Prisoner, and a Rule was made to shew Cause. The Case was, an Affidavit of the Cause of Action had been made in the King's Bench, and Defendant arrested by Latitat, after the Arrest the Defendant removed himself by Habeas Corpus to the Fleet, and the Plaintiff declared against him there, but the Person who made the Affidavit being gone abroad, the Rule of this Court, Hil. 8 Geo. II. for making an Affidavit of the Debt, and certifying it on the Declaration could not be complied with ; but it appearing, by a Copy of the Affidavit of the Debt made and filed in the King's Bench, to be the same Cause of Action, the Court discharged the Rule, being of Opinion that that \* Rule extends only to Cases where the Delivery of a Declaration against Prisoners is the first Proceeding.

\* Reg. Hil. Geo. II.



*Grimes against Clever.*

*Thomson.*

**M**OTION to set aside an interlocutory Judgment, for a Defect in the Notice of the Declaration served on the Defendant, but it appearing that a Writ of Inquiry was executed, the Motion was denied; the Defendant should have applied two Days before the Day appointed for the Execution of the Writ of Inquiry.

Motion to set aside Judgment denied, coming too late.  
Ante *Smith v. Jenks*, fo. 69.  
*Jamet v. Voyer*, 105.  
*Morse v. Farnham*, 92.

*Note*; It was said that when the Irregularity complained of is in the Copy of the Process or the Notice subscribed thereto, the Complaint must be made before Judgment is signed; but if it be in the Delivery or Notice of the Declaration, then Complaint must be made two Days before the Execution of the Writ of Inquiry.

*Girdler, Serjeant at Law, against Watthews.*

*Cooke.*

Hil. 11 Geo. II.

**O**N a Motion to change the Venue, the Question was Whether the Plaintiff not suing by Writ of Privilege, but suing as a common Person by Original, should have the Benefit of his Privilege, to retain the Venue in Middlesex: It was held that he loses it, and the Venue was changed.

A Serjeant suing as a common Person, loses his Privilege, and Venue changed.  
Ante *Welland v. Fumal*, fo. 132.

*Roundel against Powel.*

*Thomson.*

**M**OTION for Leave to enter Judgment against the Defendant, on a Warrant of Attorney after a Year: to shew that the Defendant was alive, it was sworn in the Affidavit, that he was seen in Jamaica the 13th of September last, and that the Deponent sailed from thence the 17th of that Month, and arrived in London the 15th of January following.

Leave to enter Judgment on an old Warrant of Attorney, the Defendant being in Jamaica.

*Reg. 11. Geo. II.* following; the Court made a Rule for Leave to enter the Judgment, the Application being made by the Plaintiff as soon as he could well do it.

*Note*; Where a Warrant of Attorney has been executed twenty Years or upwards, the Court will not grant an absolute Rule to enter Judgment on the usual Affidavit, (that the Warrant was duly executed, the Debt unpaid and the Parties living) but the Rule will be to shew Cause.

### *Smith against Hoff.*

*Thomson.*

Notice of  
Trial both  
countermand-  
ed and con-  
tinued is Ill.  
*Reg' Cur'*  
*Mich. 1654.*  
*sec. 21.*

**A** Motion to set aside a Verdict for Irregularity in the Notice of Trial; the Plaintiff had countermanded his Notice of Trial for the Second Sittings in Term, and at the same Time continued the Notice till the Third Sittings, which being contradictory, the Defendant made no Defence; the Court said the Plaintiff should have continued it only, and set aside the Verdict.

### *Davies against Powell and others.*

Deer distrain-  
able for Rent.

**T**RESPASS for enteting the Plaintiff's Close, called the Park, and taking his Deer; the Defendants as Servants to the Lord Cadogan justify the taking as a Distress for Rent in Arrear. To this Plea the Plaintiff demurred generally; after several Arguments on both Sides, the Lord Chief Justice delivered the Opinion of the Court.

The Question is, Whether these Deer were distrainable? It's insisted that they were not. First, Because they are fera Naturæ. Secondly, Because they are Hereditaments. Thirdly, Because Part of the Thing demised. And fourthly, Because such a Distress was never known before. To the First they cite Finch 176. Co. Lit. 47. a. 1 Rol. Abr. 666. 3 Lev. 227. and several other Authorities, That they are not distrainable, 3 Inst. 109, 10. 1 Hawk. Pl. C. 94. 7 C. 47 a. 58. the Case of the Swans, butt the Register, fo. 202. (and which is a Book of the greatest Authority in the Law) shews that this Rule is not a general Rule. The Reason why Deer are said not to be distrainable, is because they were considered as Things not of Profit, and in which no Man could have a valuable Property;

ty; but that fails now, the Plaintiff himself admits that *Hil. 1160. II.* a Man may have a Property in them by bringing this Action, in which he calls them his, and the Defendants likewise justify and say that they took the Deer, being the Property of the Plaintiff, and that they sold them for Eighty-seven Pounds, which plainly imports that a Man may have a Property in them, and in this Case a Valuable one, and this is confessed by the general Demurrer.

The 3d Inst. 410. H. Pl. Cor. makes the Difference between tame Deer and Deer at large in a Forest, but if so, they must be taken to be tame Deer in this Case.

As to the second Reason because they are Hereditaments, Co. Lit. 53. a. 5 Co. 17. Hereditaments are not distrainable, and Deer in a proper Park may be so far a Part of the Inheritance of that Park as not to be distrainable, but this cannot be taken to be such a Park, but only a Park in Reputation. Hale's Hist. 421.

As to the third Reason, that the Deer were Part of the Thing demised, the Case of Cithes was mentioned, but that is not to the Purpose, because Cithes are not properly Demisable, nor a proper Rent reservable upon it, but only a Personal contract; we agree that generally a Part of the Thing demised is not distrainable, but in this Case it appears that the Deer were not Part of the Demise, because saleable before the End of the Term.

A Reason *ab inusu* is generally a good Reason, but the Nature of Things may in Time change; it is now well known they are become Chattels of Profit, and the Practice of Grazing so general, as to be deemed a good Improvement of a Farm; the Reason of this Thing therefore being altered, the Law must vary with it.

We are all agreed that, these Deer upon all the Circumstances of this Case, were properly distrainable. Judgment for the Defendants.

*Ea. 11 Geo. II.**Horry against Bant.*

Avowry amended after Argument on Demurrer.

**I**N Replevin; the Avowry was for Rent in Arrear, and sets forth a Demise of the locus in quo at 7 l. per Annum, payable Quarterly, and that 11 l. 4 s. was in Arrear for a Year and three Quarters Rent, and that therefore the Distress was made: A general Demurrer to this Avowry, because no such Sum as 11 l. 4 s. could be in Arrear, the Cause was put in the Paper and spoke to, and this Mistake of 11 l. 4 s. instead of 12 l. 5 s. being insisted upon, it went off, and now the Avowant moved for Leave to amend, and notwithstanding it had been once spoken to, the Court made a Rule for the Amendment, on Payment of Costs.

*Note*; For the Amendment were cited 3 *Lev.* 347. and *Middleton versus Crofts*, in *B. R. Mich.* 8 *Geo. II.* In Prohibition, an Amendment after the Cause in the Paper had been twice spoken to.

*Rushell against Gately.*

Easter, 11 *Geo. II.*

Whether Bail for malicious Prosecution, the Plaintiff having been acquitted on a Flaw in the Indictment and not on the Merits.

**T**HIS was an Action for a malicious Prosecution for Forgery; upon an Affidavit the Plaintiff had obtained a Judge's Order for holding the Defendant to Bail for 200 l. for the Defendant being arrested and held to Bail accordingly, applied to the Judge who made the Order, the Judge not being fully satisfied, directed the Defendant to apply to the Court, whereupon he moved the Court to be discharged on entering a Common Appearance, and by Affidavits shewed that the Plaintiff was acquitted on a Flaw in the Indictment and not on the Merits.

*Cur'*: Let the Plaintiff shew Cause why a common Appearance should not be taken.

*Ibboson against Brown.*

**A** Motion for Directions to the Prothonotary to allow the Plaintiff full Costs, on the Authority in 2 Lev. 234. The Case was Trespass for breaking his Close, &c. the common Bar, and new Assignment, to which the Defendant pleaded Not guilty, a Verdict for the Plaintiff at York Assizes, and the Jury gave 5 s. Damages and 40 s. Costs.

Of full Costs in Case of special Pleading.

On shewing Cause it was insisted for the Defendant, that this was no Special Pleading, and therefore the Case in Levinz is an Authority in Favour of the Defendant.

Cur': 'Tis no Special Pleading, the new Assignment is only to ascertain the Place; the Rule must be discharged.

In the same Cause it was moved, that the Associate might correct his Minutes, by reducing the Costs of 40 s. (which he had minuted) to 5 s.

Cur': It has been often held that the Statute 22 & 23 Car. II. cap. 9. does not restrain the Power of the Jury, but they may give what Costs they think fit, as in other Cases, it only restrains the Court from giving Costs de Incremento.

Jury not bound as to Costs by Stat. 22 & 23 Car. II.

*Hayward an Attorney against Denison.*

*Thomson.* Trin. 11 & 12 Geo. II.

**A** Rule Nisi was made for setting aside an Attachment of Privilege, issued the 21st of January, and returnable the 30th of January, because there were not fifteen Days between the Cesse and Return.

Attachment of Privilege should have 15 Days between the Cesse and Return.

On shewing Cause, the Counsel for the Plaintiff refer'd to the Statute 13 Car. II. and the Prothonotaries said they did not know that the Practice required fifteen Days between the Cesse and Return, but that usually there were eight, and sometimes four Days.

Curia: If the Practice had warranted a Return in eight Days, then that would have been a Part of the Privilege; but as it is sometimes eight Days and sometimes four, nothing seems to be settled by the Practice; in the King's Bench their Practice has settled the Return of their Writs of Latitat, &c. at eight Days. The Common Law requires fifteen Days between the Cesse and Return of all Writs, and if the Practice has not settled it otherwise, the Law ought to prevail in this as well as in other Cases.

The Rule was accordingly made Absolute.

Tri. 11 & 12  
Geo. II.



*Ellison against Newton.*

Plea of  
Privilege ill, as  
not saying  
fuit Attorn  
tempore Im-  
petrationis  
b'vis Original.

**I**N Abatement of the Writ, the Defendant pleaded, That he was and is an Attorney, and therefore ought to be sued by Bill, and not by Writ. To this Plea the Plaintiff demurred generally.

On arguing the Demurrer, it was objected on the Behalf of the Plaintiff, that the Plea does not say that the Defendant was an Attorney at the Time of the suing out the Original Writ.

1 Salk. 1 pl. 2.  
6 Mod. 105,  
106.  
1 Vent. 154.

For the Defendant it was insisted, that this is only Matter of Form.

Cur': It is Matter of Substance, let the Defendant answer over.

*Penrice against Jackson.*

Verdict set a-  
side, 24 Jurors  
being return-  
ed on the Ve-  
nire and 48  
on the Habeas  
Corpora.  
Stat. 3 Geo. II.

**A** Motion to set aside a Verdict without Costs, and a Rule Nisi.

The Defendant had made no Defence at the Trial, because the Sheriffs of Worcester had returned but 24 Jurors on the Venire, but finding their Mistake, had on the Habeas Corpora returned 24 more, so that the Defendant could not challenge the Array as insufficient at the Time of the Trial, nor have any other Redress of this Matter than by Motion.

Curia: Imperfect Returns may be helped by the Statute, but here the Fault is Matter of Fact, the Rule must be made absolute.

*Sellen against Chamberlain.*

Motion to put  
off a Trial  
should be  
made two  
Days before  
the Day of  
Trial.

**A** Motion was made to put off a Trial that was to come on the next Day, but refused, because such Motions by the Practice of the Court should be made at least two Days before the Day of Trial.

*Shipman*

Tri. 11 & 12  
Geo. II.

*Shipman against Thompson.*

**T**HIS was a Case reserved at Lincoln Assizes for the Opinion of the Court on the Construction of the Stat. 2 Geo. II. c. 22 sec. 11. The Case was, the Plaintiff's Husband, to whom she was Executrix, had by Letter of Attorney appointed the Defendant his Steward; the Defendant received of the Tenants several Sums of Money for Rent after the Testator's Death. The Plaintiff brought this Action in her own Name, and not as Executrix, for the Money so received, as received to her Use; Notice was given to set off against the Plaintiff's Demands certain Sums that were due from the Testator to the Defendant; but at the Trial the Defendant was not admitted to set off what was due from the Testator to him, because the Plaintiff had not declared as Executrix, but in her own Right; and now two Questions were raised, First, Whether the Plaintiff ought not to have declared as Executrix. Secondly, Whether the Defendant ought not to have been admitted to set off his Demands.

Where an Executrix declares in her own Right, the Defendant cannot set off a Debt due from the Testator.

Curia: Here are two Questions, which are in Effect but one, And the single Question is, Whether the Action be rightly brought?

Where a Cause of Action accrues after the Death of the Testator, it is most proper for the Plaintiff to sue without naming himself Executor, and it's such a Case as the Plaintiff, tho' named Executor, would be liable to pay Costs, in Case of a Nonsuit or Verdict, and it's doubtful whether the Plaintiff in this Case, should sue as Executrix, would not be liable to pay Costs on a Nonsuit, the Reason given in 1 Salk. 314. a very bad one, in 1 Salk. 27, 207. it is said to be determined on another Point; as there is nothing in the Defendant's Objections, so the Plaintiff must have the Benefit of her Verdict.

Cartwright 335.  
6 Mod. 91.  
1281

*Bennet against Skinner.  
Idem against Sydenham.*

Mich. 12 Geo. II.

**O**N a Motion to set aside an Outlawry, the Court held that the Defendant's own Affidavit of his being a Visible Person, without a like Affidavit by his Neighbours, is not a sufficient Foundation to set aside an Outlawry.

What Proof of Defendant's being a visible Person necessary to set aside an Outlawry.

*Watson*



*Mic. 1 2 Geo. II.**Watson against Lewis.*

Venue not  
to be changed  
in an Action  
on a promissory  
Note only.

**M**OTION to make a Rule absolute for altering the Venue from Middlesex to Surry; but on producing the Declaration it appeared to be an Action on a promissory Note only; therefore the Rule was discharged.

*White against Washington.*

Proceedings  
set aside for  
Irregularity  
in Process, and  
Rule for At-  
torney to shew  
Cause why he  
should not pay  
the Costs.

See Stat. 5  
Geo. I. c. 13.  
as to Errors  
in Writs.

**M**OTION to set aside the Proceedings against the Defendant for several Mistakes in the Capias and Copy served, viz. First, In the Direction to the Sheriff, the Word To was left out. Secondly, The Word Take omitted. Thirdly, The instead of She, and Fourthly, In the Notice it was for the 20th of October, without saying next or this Instant, which Mistake alone, it was insisted, would have been fatal, had the Capias been Right. A Rule Nisi was made, and on shewing Cause, it was argued for the Plaintiff, that the Defendant did not come in Time, the Declaration being filed, and a Rule given to plead.

Curia: This is a very great Negligence of the Plaintiff's Attorney in not making the Process right, and an Offence to the Court, in making their Process erroneous, especially where the Chief Justice is the Witness. The Application is not too late, it may be any Time before Judgment. Let the Rule be made absolute, and another Rule granted against the Plaintiff's Attorney, to shew Cause, why he should not pay the Costs of the Proceedings, Motions, &c. on both Sides occasioned by his Mistakes.

*Doe against Lushington, on the Demise of Godfrey.*

What Bail on  
Error in E-  
jectment.

**M**OTION for Leave to take out Execution after Error in Ejectment, and Rule Nisi. On shewing Cause, the Question was, Whether Bail by two Strangers for the Tenant in Possession, be sufficient Bail on Error, in Ejectment, the Statute 16 & 17 Car. II. requiring that the Plaintiff in Error in such Case should himself enter into the Recognizance. For the Tenant it was insisted, that it had been the Practice to put in other Bail, that if good Bail be put in, it's sufficient and answers the Intent of the Statute, and

3 Lev. 375.  
Carlew 121.

and that as Bail in Error cannot be put in before a Commissioner in the Country, the Inconvenience would be great, for the Plaintiff to make a Journey from the furthest Part of the Kingdom, when the Purpose may as well be answer'd without it. *Mic. 12 Geo. II.*

On the other Side it was said that the Tenant of the Land was the best Security, and the Words of the Statute require his becoming bound in the present Case.

Cur': The Practice of taking other Bail hath expounded this Statute, and there is no Inconvenience as the Security is bettered; and tho' this Construction is not within the Letter, it is within the Equity of the Statute, and it's so settled by the Practice of all the Courts; the Rule must be discharged.

*Clarke against Swift.*

**M**OTION for Leave to plead double, Non Assumpsit *Double Pleas.* and a Cross Demand, and granted.

*Stibbs against Nives*, Trin. 10 Geo. II. *Borret*, In Crespas, the Court gave Leave to plead, Not guilty and Liberum Tenementum. *This was not opposed.*

*Jones against Body*, Easter 12 Geo. II. Leave given to plead Non Assumpsit and the Defendant's Discharge under the Insolvent Debtors Act; and *Lille against Jennyns* the same Term, Non est factum, and the Defendant's Discharge under the said Act.

*Baynes against Lutwich*, Trin. 11 & 12 Geo. II. Leave given to plead a Distress for Damage-feasant, and for Rent in Arrear. And *Church against Fendall*, Easter 11 Geo. II. Damage-feasant, and under a Demise from Defendant to Plaintiff. And *Bird against Spinks*, Mich. 10 Geo. II. Leave to plead, that Plaintiff in Replevin had not Property, and a Justification as a Distress for Rent.

*Wisbetch against Fryar*, Mich. 8 Geo. II. A Motion by an heir for Leave to plead Solvit ad diem and Riens per descent, and granted.

*Heathfield against Allen*, Mich. 8 Geo. II. Leave given an Executor to plead Non Assumpsit and Plene Administravit.

*Mic. 12 Geo. II.* *Note*; Affidavit must be made by the Executor or Administrator, that he hath fully administered and by the Heir that he hath nothing by Discent, before Motion.

Contradictory double Pleas. The following double Pleas have been denied as Contradictory.

Non Assumpsit and a general Release. *Gibson against Cole*, Hil. 6 Geo. II.

In Trespass, Librum Tenementum, and a Justification in removing a Nuisance, *Halley against Feltham*, Trin. 6 & 7 Geo.

To an Action against an Innkeeper for detaining a Horse, Not guilty, and an Accord and Satisfaction, *Dursley against Cole*, Hil. 7 Geo. II.

In Trespass, Not guilty, and a Justification, *Barnet against Greaves*, Hil. 10 Geo. II.

*Buck against Warren*, East. 10 Geo. II. Non Assumpsit and Non Assumpsit infra sex annos denied, after Money had been brought into Court; the same denied after the Defendant had pleaded singly Non Assumpsit, *Nevil against Fisher*, Hil. 10 Geo. II.

Nil habuit in Tenementis may be given in Evidence, on a Plea of Nil debet, *Marshall against Lawrance*, Trin. 8 & 9 Geo. II.

Motion to plead Double may be made any Time before Judgment, *King against Boswell*, Mich. 7 Geo. II.

*Leighton against Leighton*, Mich. 10 Geo. II. Leave given to plead Double after a Judge's Order for Time to plead.

*Horsfull against Greenwood and others.*

Hil. 12 Geo. II.

**T**HE Defendants, in Hilary Vacation, pleaded several Special Pleas, but in the same Vacation, before Replifications were delivered, withdrew those Pleas and pleaded the general Issue.

Defendant may waive his special Plea, and plead the general Issue the same Term, without Costs.

Per Cur': After a special Plea pleaded, tho' the Plaintiff has prepared his Replication, yet the Defendant may the same Term, before the Delivery or filing of the Replication, waive his special Plea, and plead the general Issue without paying Costs.

*Plumb against Savage and Wife, on the Demise of Bryan.*

**M**OTION for an Attachment for Contempt, and Rule Nisi.

Landlord made Defendant, and Tenant delivers Possession, no Contempt.

The Case was, A Declaration in Ejectment had been delivered to the Tenant in Possession, but he refusing to appear, Savage and his Wife were admitted to defend, pursuant to the Stat. 11 Geo. II. and after they had pleaded, the Tenant, (just before the Expiration of his Lease) delivered the Possession to one Reeves on the Behalf of the Lessor of the Plaintiff; thereupon the Defendants obtained this Rule against the Lessor and his Attorney, for gaining the Possession in this Manner, and then not proceeding in the Cause; but on shewing Cause both the Lessor and his Attorney denied any Practice with the Tenant.

Curia: This is no Contempt, the Rule must be discharged.

*Walsh, Assignee of the Sheriff of Middlesex, against Haddock.*

**T**HE Defendant became Bail to the Sheriff for the Appearance of W. R. at the Return of the Writ, Bail was filed above, but excepted to, and that Exception entered on the Bail-piece. Afterwards without any complete Justification, the Plaintiff delivers his Declaration generally, and proceeded to Issue, Trial and Judgment, and then brings this Action; to which the Defendant pleaded *comperuit ad diem*, and

Exception to Bail waived by proceeding in the Original Cause.

*Eas. 12 Geo. II.* and in Order to maintain that Plea, the Court was now moved for Leave to strike out the Exception on the Bill-piece, that it might be filed, insisting that the Proceeding generally was a Waiver of the Exception.  
Curia: Let them shew Cause.

*Webb, Administrator of Russel, against Spurrel.*

Easter 12 Geo. II.

Action by an Administrator on a Judgment signed in the Life of the Intestate, but not entered on Record.

THE Plaintiff's Intestate in Trinity Term 10 Geo. II. obtained a Verdict against the Defendant, and the now Plaintiff brought an Action on that Judgment. The Defendant, in Hilary Term last, pleaded Nul tiel Record, and now moved to stay the Entry of that Judgment, Affidavit being made that no such Judgment was actually entered on Record within two Terms after the Verdict, according to the Stat. 17 Car. 2. cap. 8. A Rule Nisi was granted.

On shewing Cause, it was argued for the Plaintiff, that tho' the Judgment was not entered on Record according to the Statute, yet it appeared, by the Postea and the Prothonotaries, Book to have been signed the 19th of October, and therefore was a Judgment of Trin. 10 Geo. II. that it is the Duty of the Clerk of the Judgments to enter the Judgment, he being paid for it, at the Time of signing, tho' they are seldom entered till wanted; that as the signing Judgment is the Act of the Court, it is supposed to be entered instant; and that it is the Course of the Court to enter Judgments of the Term they are signed.

The Court said this Practice might be of ill Consequence to Purchasers and others, but enlarged the Rule.

Note; The Plaintiff's Attorney on signing final Judgment had taken away the Postea, and had not brought it back to the Office till within some few Days before the Motion. The Court, to the Intent the Clerk of the Judgments might not, by such Practice, for the future be hindered from entering Judgments immediately on Record, and to prevent Inconveniences to Purchasers and others, in searching the Prothonotaries Books, made a general Rule, *Vide Trin. 13 Geo. II. reg. 2.* That from and after the last Day of this Term, all Postea and Inquisitions whereon final Judgments are signed, should immediately be left with the Clerk of the Judgments.

*Creak and Creak, Administrators, against Pitcarne.*

Trin. 13 Geo. II.

**T**HE Plaintiffs as Administrators of J. C. were sued in the Consistory Court of Norwich, for Cithes of some Barshes due from the Intestate in his Life-Time, whereupon they alledged a Modus, and here obtained a Prohibition, with Directions forthwith to declare, in order to try the Merits of the Suggestion, the Plaintiffs accordingly did declare, and the Defendant after denying his Proceeding in the Court below, after Prohibition delivered, for Consultation alledges that there is no such Modus, and thereupon Issue is joined; at the Lent Assizes for Suffolk 1738, the Defendant having given due Notice of Trial, enters the Record, and the Cause being called, the Plaintiffs were nonsuited without offering any Evidence. Upon this the Defendant being intitled to Judgment, and a Consultation, applies to the Prothonotary to tax his Costs; but that being opposed by the Plaintiffs, and the Prothonotary desisting, the Court was now moved by the Defendant for Directions in taxing the Costs in this Suit and the Costs of the Suggestion, six Months being elapsed since the granting of the Prohibition, and the Suggestion being not proved.

No Costs payable by an Administrator on a Nonsuit upon a Prohibition obtained by him.

For the Defendant it was insisted, First, That as this Suit arose since the Death of the Intestate, they are to pay Costs, for the same Reason that Plaintiffs in Trover or other Actions arising in their own Time are not excused from Costs. Secondly, That they are in this Case to be considered as mere Defendants, this Suit being commenced only to stop the now Defendant's Proceeding against them in the Court Christian, where they were mere Defendants, Executors, Administrators, when Defendants being in all Cases liable to Costs on Judgments given against them.

Thirdly, That there is no Exception in Favour of Administrators in the Stat. 3 Ed. VI. cap. 13. therefore the six Months being elapsed, and no Proof made of the Suggestion, the now Defendant is intitled to his double Costs.

Fourthly, That the Plaintiffs not appearing or attempting to prove the Modus in the present Case, were nonsuited by their own wilful Default, and in all Cases of wilful Defaults in Executors or Administrators, as not going on to Trial pursuant to Notice, suffering Judgment for want of a Replication or the like, they are always liable to Costs, ever since

*Tri. 13 Geo. II.* the Stat. 23 H. 8. cap. 15. and this very Point had been so settled in the King's Bench, Hil. 4 Geo. I. *Willis against Brown.*

Fifthly, That if Executors and Administrators being Plaintiffs in Prohibition are never liable to Costs upon a Judgment against them, then every Man had better give up his Right to Cithes due from them, than commence a Suit in the Court Christian, and expose himself to their Mercy, at the Hazard of being put to twice as much Charge as the Cithes may be worth, without being reimbursed any Part thereof, if a Prohibition should be applied for.

For the Defendant it was insisted that the Stat. 8 & 9 W. 3. cap. 10. has an express Proviso in favour of Executors and Administrators; that this being a Demand for Cithes during the Life-Time of the Intestate, the Plaintiffs could not be sued but as Administrators, and tho' the Suit in Prohibition was commenced since the Death of the Intestate, yet it was merely to protect the Assets, as in Cases of Writs of Error brought by Executors or Administrators, they pay no Costs, and that when a Plaintiff in Prohibition is ordered to declare, he is excused from making Proof of his Suggestion, pursuant to the Stat. Ed. 6. the Proof being to be made at the Trial Per Pais.

Curia: The Defendant is intitled to no Costs in this Case.

### *Barnes against Ward.*

Mich 13 Geo. II.

Warrant to  
confess a  
Judgment ex-  
ecuted by a  
Prisoner must  
be in the Pre-  
sence of an  
Attorney on  
his Behalf.

**M**OTION to set aside an Execution; the Case was, The Defendant being in Custody at the Plaintiff's Suit, executed a Warrant of Attorney to confess Judgment, having first sent for Mr. — an Attorney, or his Clerk, to come and assist him; the Clerk actually attended, but he not being then a sworn Attorney, the Court held that the Execution of the Warrant of Attorney was irregular, the Presence of a sworn Attorney being necessary, pursuant to the Rules of the Court. It was thereupon prayed that the Rule might be enlarged, in Order to get an Affidavit, that the Plaintiff's Attorney was present, his Counsel apprehending that

that that would be sufficient; the Rule was accordingly enlarged, but afterwards made absolute, and the Prothonotary directed to settle Satisfaction for such Effects as could not be restored in Specie.

Misc. 13 Geo. II.

*Anonymous.*

**M**OTION to change the Venue, and Rule Nisi. On the showing Cause it was insisted for the Plaintiff, that tho' the Rules for pleading were not out at the Time of the Defendant's Motion, yet as he had gained Time by Application to a Judge for an Imparllance from Trinity Term last, he ought not now to move to change the Venue; contra it was said that whether an Imparllance had been had or not, yet at any Time before Plea pleaded, tho' the Rules for pleading are out, the Defendant may move to change the Venue, unless he had applied for Time to plead, and in that Case the Court would not suffer him to make use of that Indulgence to the Plaintiff's Prejudice.

Defendant may move to change the Venue after Imparllance.

Curia: The Imparllance in this Case was no more than the Defendant was intitled to; the Rule must be made absolute.

*Robinson against Tuckwell.*

**A** Motion to set aside an Execution executed after a Writ of Error allowed, and a Rule Nisi. The Case was, the Plaintiff having obtained a Verdict and Judgment for Costs, the Defendant sued out a Writ of Error; and pending that Writ, the Plaintiff brought an Action of Debt on the Judgment, and after Judgment thereon took out an Execution, and got it executed without Leave of the Court. And now on the showing Cause it was insisted that the Plaintiff might proceed as he has done, unless the Defendant had obtained a Rule for staying Proceedings upon his confessing Judgment; which Rule he might have had for asking; but having not done so, the Plaintiff's Execution is regular, and ought not to be set aside; the Case of *Humphrys and Daniel*, East. 9 Geo. II. being a Determination in Point.

Defendant on Judgment after Error brought and Judgment thereon, Plaintiff may take out Execution.

Curia: The Rule must be discharged.



*Palmer against Sir James Edwards.*

Words not  
Actionable,  
Judgment ar-  
rested after  
Verdict.

**I**N an Action for Scandalous Words spoke of a Justice of the Peace, viz. 1. You robbed the Poor, and are worse than a Highwayman. 2. You Villain you have robbed the Poor and are worse than a Highwayman. 3. You Villain you have robbed the Poor. 4. You are worse than a Highwayman. A general Verdict was given for the Plaintiff, and 5 l. Damages, Motion in Arrest of Judgment, and Rule Nisi. On shewing Cause two Counsel were heard on each Side, and many Cases cited.

Curia: There is not much Difficulty in this Case, but there is no End of citing and answering Cases; to bear an Action, Words must have a certain Signification, must so reflect upon a Person, that if true he might be liable to some legal Punishment, or if from the speaking some particular Damage does accrew, or is likely so to do, and Costs or Damages, or upon a Colloquium of his Trade. The Plaintiff here is said to be a Justice, yet no special Damage laid in this Case; the Office of Justice of the Peace not so considerable but that many People choose to decline it. Villain alone has never been held to be actionable; indeed in the Case of Scandalum Magnatum the Rules are very different. Robbing, a Word of uncertain Signification, which Uncertainty is rendered greater by the Words annexed, robbed the Poor, what Poor and when? The Words therefore Villain and robbed the Poor not being actionable, and the Verdict general, if one Set are bad, the Judgment, must be arrested as to the Whole. Worse than a Highwayman is very uncertain, for a Papist will say so of any Protestant, and it has been said by some Protestants of others, only in Regard to their Religious Differences; Judgment must be arrested.

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A

# T A B L E

T O

## The Rules and Cases of Practice

I N T H E

## Court of Common Pleas.

*Note; The Table to the RULES refers to the Term, and is printed in the lesser Letter.*

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| <p style="text-align: center;"><i>Abatement.</i></p> <p>See <i>Amendment.</i> 4.<br/> <i>Attorney.</i> 5.<br/> <i>Costs.</i> 30.<br/> <i>Plea.</i> 2, 6, 23.</p> <p>1. <b>A</b> Plea in Abatement ought to be pleaded within four Days after the Declaration delivered, or left in the Office. <i>Page</i> 63</p> <p>2. When the Declaration is delivered so late in the Term, that the Defendant is not obliged to plead that Term, he must, within the first four Days of the next Term, apply to the Prothonotary for a special Impar lance. 78</p> <p>3. A Plea in Abatement is not to be received without an Affidavit. 89</p> <p>4. Plea of Privilege by an Attorney held to be ill, not saying <i>Fuit Astorn' tempore impetrationis brevis originalis.</i> 150</p> <p style="text-align: center;"><i>Actions.</i></p> <p style="text-align: center;">See <i>Venue.</i></p> <p>— to be laid in their proper Counties. <i>Reg.</i><br/> <i>Mich.</i> 15 <i>Elin.</i> <i>Mich.</i> 1654. <i>sec.</i> 8, 12.</p> | <p style="text-align: center;"><i>Affidavit.</i></p> <p>See <i>Abatements.</i> 3.<br/> <i>Ejectment.</i> 4, 5.<br/> <i>Outlawry.</i> 7.<br/> <i>Plea.</i> 3, 23.<br/> <i>Prisoner.</i> 13.<br/> <i>Prohibition.</i> 2.<br/> <i>Trial.</i> 6, 7.</p> <p>1. Affidavit made of the Debt, but by Mistake not filed, the Defendant arrested; Costs paid by Plaintiff, but Attachment denied. <i>Page</i> 125</p> <p>2. Affidavits taken by Commissioners in the Country to be filed before they be read in Court. <i>Trin.</i> 2 <i>W. &amp; M. reg.</i> 2.</p> <p>3. The Secondaries are not to file Affidavits taken before any Person that is not commissioned. <i>Ibid.</i></p> <p>4. Affidavits used before the Prothonotarys to be filed. <i>Hil.</i> 11 <i>Geo.</i> II.</p> <p>5. Affidavits to hold to Bail, and of Service of Process, where only a common Appearance is required, may be sworn before the Plaintiff's Attorney, being a Commissioner. <i>East.</i> 13 <i>Geo.</i> II.</p> <p style="text-align: right;">T t      <i>Admi-</i></p> |
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26. — and come into Commons, on Penalty of being put out of the Roll. *Ibid.*

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28. — not to be sworn, unless so admitted. *Ibid.*

29. — the Form of their Oath on Admittance. *Mich. 1654. sec. 26.*

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31. — to continue and make Entries in that Office wherein they are first settled. *Trin. 21 Car. II. Hil. 8 Car. I.*

32. — not to shift from the Office elected without Leave of the Court. *Trin. 21 Car. II. reg. 1, 2. Mich. 1654. sec. 6.*

33. — not to be changed without an Order and Notice to the adverse Party. *Mich. 1654. sec. 13.*

34. — liable to Attachment, for not entering an Appearance according to Undertaking. *Mich. 1654. sec. 13.*

35. — to file the Warrants of Attorney. *Hil. 14 & 15 Car. II. Trin. 35 Hen. VI. sec. 4. Mich. 5 Geo. II.*

36. — not to procure or receive Blank Warrants. *Hil. 14 & 15 Car. II.*

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## A TABLE to the Rules and Cases of Practice in C. B.

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### Bail on Habeas Corpus.

62. In all Cases of Removal by *Habeas Corpus*, Privilege or *Certiorari*, special Bail ought to be put in. *Mich. 1654. ſec. 12. Mich. 1649. reg. 2.*

## A TABLE to the Rules and Cases of Practice in C. B.

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66. If the Plaintiff or his Attorney be absent, the Bail to be taken conditionally. *Ibid.*

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68. Exception to be made in twenty Days. *Ibid. ibid.*

69. ——— to be filed with the Prothonotary in four Days after the twenty. *Ibid. & Mich. 1654. sec. 11.*

70. ——— the Judges Clerk to take the Fees for Filing, and deliver the same to the Prothonotary. *Ibid. ibid.*

71. Bail to be put in in eight Days after the Allowance of the *Ha. Cor.* where it is returnable *immediate*, or a *Procedendo*. *Ibid. ibid.*

72. Rules may be given in Term-time, to speed the Defendant in putting in Bail. *Ibid. ibid.*

73. Bail on Reversal of an Outlawry or *Habeas Corpus* not liable, unless the Original be shewn with the Declaration. *Mich. 1654. sec. 12.*

### Bail-Bonds.

1. A Prisoner taken on a *Capias* in Process to give Bond to appear, before he be discharged. *Mich. 1654. sec. 9.*

2. Bail must be put in with the proper Filacer, or the Plaintiff may proceed on the Bail-Bond. *Trin. 1 W. & M. reg. 2.*

3. No Bail-Bond taken in *London* or *Middlesex* to be put in Suit till after four Days, exclusive of the Appearance-Day of the Return of the Process. *Hil. 9 Ann. reg. 4.*

4. ——— in other Cities and Counties in eight Days. *Ibid.*

5. The Plaintiff may proceed on the Bail-Bond, unless Bail be perfected in four Days after Exception taken. *Trin. 3 & 4 Geo. II.*

6. ——— on what Terms the Defendant shall be admitted to plead to the original Action. *Hil. 6 Geo. II. reg. 2.*

### Bailiffs.

1. Bailiffs to be punished for delaying the Execution of Process, taking undue Fees, giving Notice to the Defendant, or detaining Monies levied. *Mich. 1654. sec. 2.*

2. ——— not to practice as Attornies. *Ibid. sec. 1.*

3. No Bailiff, Sheriff's Officer, or other Person concerned in the Execution of Process, to be Bail. *Mich. 6 Geo. II. reg. 7.*

4. ——— not to take Warrants to acknowledge Judgment from Persons in their Custody, but in the Presence of the Defendant's Attorney. *Hil. 14 & 15 Car. II.*

5. ——— not to discharge Persons taken on a *Capias utlagatum* without a *Superfedeas*. *Mich. 1654. sec. 9. Hil. 14 & 15 Car. II. reg. 4. Mich. 9 Car. II.*

A

### Bankrupt.

See *Ambassador*. 1.

### Baron and Feme.

See *Declaration*. 3, 4.  
*Prisoner*. 8.

1. On Judgment against Baron and Feme both must surrender in Discharge of the Bail, and the Wife cannot be discharged. *Page 52.*

2. In an Action against Baron and Feme, if only the Wife be arrested, she shall be discharged on a common Appearance; but if both be arrested, both shall be held to Bail. *117*

### Battery.

The special Writ in Battery contains but one Battery, the Declaration may contain many. *48*

### Bills against Attornies.

See *Attornies*.

### Capias ad satisfaciendum.

See *Bail*. 11.

### Capiatur.

See *Judgment*.

### Causes.

See *Costs*.

1. ——— to proceed in the same Office they began. *Mich. 1654. sec. 7.*

2. Causes in *London* and *Middlesex* to be entered in the Marshal's Book two Days before the Day of Trial. *East. 2 Ja. II. Former Rule, Mich. 1654. sec. 21.*

3. ——— at the Affizes to be entered before the first Sitting of the Court. *Hil. 14 Geo. II.*

4. ——— to be tried in Courfe as they are entered. *Ibid.*

5. ——— not to be put in the Paper to be argued after the last Paper-day without Leave. *Trin. 12 Geo. I.*

### Certiorari.

See *Error*. 19.

1. Writs of Error and *Certiorari* shall be delivered to the Chief Justice before they are broken. *Trin. 24 Eliz.*

2. Writs of *Certiorari* to the Bishop of *Ely* to be marked with the Words *Iste of Ely*, and indorsed by a Judge. *East. 13 W. III.*

Clerk

## A TABLE to the Rules and Cases of Practice in C. B.

### Clerk of Assise.

1. ——— to make Return of *Posseas* to the Prothonotaries upon the *Quarto die post* of the Return of the *Nisi prius* in Bank, on Penalty of twenty Pounds. *East. 2 Jac. II.*
2. ——— to take the Fees for such Return at the Trial. *Ibid.*
3. ——— to appear with their *Posseas* on the first Day of *Easter*, and *Michaelmas* Term. *Mich. 1654. Jac. 1.*
4. To deliver *Posseas* on penal Statutes to the Prothonotary. *East. 34 Car. II.*

### Clerk of the Effoins.

1. ——— to make an alphabetical Dogget of all Judgments, on Penalty of a hundred Pounds. *East. 5 W. & M. reg. 2.*
2. ——— to lay before the Court every Term an Account of the Rolls not brought in. *Mich. 2 Geo. I.*
3. ——— not to deliver out Post-Rolls for the entering of Issues of a subsequent Term. *East. 5 W. & M.*
4. ——— not to deliver Post-Rolls to any but the Prothonotaries. *East. 34 Car. II. reg. 3.*

### Clerk of the Judgments.

1. ——— to take the *Posseas*, Inquiries, &c. on signing Judgment. *Trin. 29 Car. II. reg. 5. East. 34 Car. II. Trin. 13 Geo. II. reg. 2.*
2. Those *Posseas* and Inquisitions not to be taken out of the Office afterwards without Leave. *Trin. 13 Geo. II. reg. 2.*

### Clerks of the Office.

See *Attorney. 61.*

1. No Prothonotary's Clerk to draw up any Paper or Book of the Office in any Cause wherein he is Attorney, unless the other Party assent thereto. *Mich. 15 Eliz.*
2. ——— to enter in one Office only. *Mich. 1654. sec. 6.*

### Clerk of the Treasury.

See *Trial.*

1. ——— may require any Person to produce Proceedings, in order to discover if Issues be made up of the same Term they are joined. *Hil. 11 Geo. I.*
2. ——— not to permit Issues to be entered of a subsequent Term. *East. 5 W. & M.*
3. ——— to sign Executions after two Terms. *Mich. 1654. sec. 6.*
4. ——— to sign and seal Records of *Nisi prius* within three Weeks after every issuable Term, and not afterwards, without special Order. *Trin. 29 Car. II. reg. 4.*
5. ——— not to sign Records of *Nisi prius* till Warrants of Attorney be filed. *Hil. 2 & 3 Jac. II.*
6. ——— his ancient Fees. *Trin. 35 H. VI. sec. 7.*

### Clerk of the Warrants.

1. ——— to table the Names of Sheriffs, Deputies, &c. *Mich. 1654. sec. 1.*
2. ——— to deliver Rolls to the Clerk of the Effoins. *Ibid. sec. 7.*
3. ——— to attend at the Treasury three Weeks after every issuable Term, (or so long as Records are sealed without a Judge's Warrant) to receive Warrants of Attorney. *Hil. 2 & 3 Jac. II.*
4. ——— to stamp the Records of *Nisi prius* before Sealing. *Ibid.*
5. ——— to stamp the Judgment-Paper. *Mich. 5 Geo. II.*
6. ——— to stamp every *Pluries capias* before Exigent be made out. *Hil. 2 & 3 Jac. II.*
7. ——— to have a Note of Judgments on penal Statutes. *East. 34 Car. II.*
8. ——— to certify to the Seal-Office the Names of Attornies forejudged, discontinued, or that have not filed Warrants of Attorney, nor continued their Names on the Roll for above four Terms. *Trin. 29 Car. II.*
9. ——— to sign Writs of Privilege. *Ibid.*
10. ——— to present the Names of Attorneys permitting others to practice in their Names, or that do not appear every Term, or neglect to file their Warrants of Attorney. *Hil. 14 & 15 Car. II. reg. 2.*

### Clausum fregit.

See *Bail. 3.*  
*Heir.*

On a *Clausum fregit* the Plaintiff may declare in any Action. Page 75

### Commitments.

1. A Prothonotary's Clerk to be present upon Commitment out of Court on *Habeas Corpus*. *Mich. 1654. sec. 10.*
2. The Fees on Commitment to the Fleet in civil Actions. *Jan. 19. 1729. 3 Geo. II.*
3. ——— to be entered in the Warden's Book in fourteen Days. *Hil. 3 Geo. II.*

### Concilium.

See *Demurrer. 2.*

### Contempt.

See *Prisoner. 2, 3.*

1. Defendant being served with Process cursed the Court; an Attachment granted without Rule to shew Cause. 132
2. Recognizance to answer Interrogatories on a Contempt discharged before Examination, on Payment of Costs. 121

### Corporation.

See *Effoin. 1.*

*Cops.*



# A TABLE to the Rules and Cases of Practice in C. B.

## Costs.

See *Ejectment*. 11, 12.  
*Homine replegiando*. 1.  
*Mutual Debts*. 1.  
*Sci. fa.* 3.

1. Several Trespasses, *inter alia*, for turning up the Soil with Ploughs, Damages found under forty Shillings, no Costs *de incremento*.  
 Page 2

2. On an Action for Words, and Damages under forty Shillings no Costs allowed, though a special Justification had been pleaded. 22

3. In a Trespass which concerns a Freehold, and an Assault and Battery joined, the Plaintiff shall have no more Costs than Damages. 24

4. In Trespass for an Injury done to a personal Chattel the Plaintiff shall have full Costs, though the Damages found be under forty Shillings. *ibid.*

5. In Trespass the Jury gave 3 s. 4 d. Damages, and 40 s. Costs, and the Prothonotary allowed 6 s. 8 d. for the *Capiatur* Fine; held, that the Jury is not bound by the Statute, and the Prothonotary by 5 & 6 W. & M. is to allow the *Capiatur* Fine. 45

6. In Trespass where there is an Injury done to a personal Chattel, and no Freehold comes in question, the Judge need not certify, and the Plaintiff shall have full Costs, though Damages found be under 40 s. 49

7. In Trespass where the Freehold might have come in Question, a Judge's Certificate is necessary, to intitle the Plaintiff to full Costs. 86

8. In Trespass where a Damage is done to a personal Chattel, the Plaintiff shall have full Costs, though Damages found be under forty Shillings. 99

9. Full Costs allowed in Trespass and Assault, and for tearing Plaintiff's Cloaths. 108

10. In Trespass the special Matter laid being found for the Defendant, and the rest for the Plaintiff, he shall have no more Costs than Damages. 117

11. In an Action for Words and special Damages laid, Defendant shall have full Costs. 137

12. The new Assignment no special Pleading to intitle the Party to Costs. 149

13. An Executor, Plaintiff, shall pay Costs on a Non-pross for want of a Replication. 14

14. Executors, Plaintiffs, nonsuited on a Trial upon a Promise made to the Testator, no Costs allowed. 20

15. If an Executor discontinue, he shall pay Costs. 79

16. Costs payable to a Defendant by a Rule of Court, on his Death are payable to his Executor. 113

17. An Administrator nonsuited on Trial in Trover, the Trover in the Intestate's Time,

the Conversion in the Plaintiff's, he shall pay Costs. *Page 61*

18. No Costs payable by an Administrator on a Nonsuit, upon a Prohibition prayed by him. 159

19. In Prohibition the Plaintiff ought to have the Costs of the Suggestion itself, and all subsequent Costs. 11

20. On Judgment by Default in Prohibition the Plaintiff shall have a Writ to inquire of his Damages, and his Costs taxed from the Time the Rule or the Prohibition was made absolute. 20

21. Where Judgment is for the Defendant on a Demurrer in a *Quare impedit*, he shall have Costs. 4

22. No Costs given by the Jury on a Verdict, but added by the Court. 7

23. Treble Costs allowed a Commissioner of the Land-Tax where the Plaintiff was nonsuited, though the Judge had not certified. 16

24. No Costs for not executing a Writ of Inquiry according to Notice. 86

25. Costs allowed to the Defendant on the Plaintiff's setting aside his own Writ of Inquiry. 93

26. On a Verdict for the Defendant, upon an Action for Exercising a Trade contrary to the Statute, Costs allowed. 22

27. Where a Statute gives a Penalty to a Party injured he shall have Costs, *aliter* in Case of a common Informer. 87

28. In Formedon in Remainder, where Judgment is given for the Tenant on Demurrer, he shall have no Costs. 25

29. A *Prochein amy* shall pay Costs for not proceeding to Trial. 32

30. Issue on a Plea in Abatement, and the Plaintiff nonsuited at the Assizes, the Defendant allowed Costs. 35

31. Costs taxed against a Pauper for not proceeding to Trial. 47

32. Plaintiff paid Costs for not going to Trial, though the Defendant had entered a *Ne recipiatur*. 60

33. An Agreement to pay Debt and Costs, the Costs shall not be taxed as between Attorney and Clients. 69

34. On an Award to pay Costs, the Costs to be taxed shall be as between Party and Party, and not as between Attorney and Client, except there be a special Agreement. 70

35. No Costs on a *Sci. fa.* before the Defendant has pleaded. 74

36. The Charge of a Witness allowed, though the Judge would not permit him to be examined. 98

37. Costs on a Verdict for some of the Defendants, though the others let Judgment go by Default. 107

38. Costs of Repleader denied where the Plaintiff had proceeded to Trial on a Plea of *Non assumpsi*, to an Action of Trover. 116

39. The

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39. The Charge of striking a special Jury is to be paid by the Party who applied for the special Jury, but the other necessary Charges are to be allowed. *Page 138*

40. No Costs on a Reference or Remanet. *ibid.*

41. Jury not bound as to Costs by the Statute of 22 & 23 Car. II. *149*

42. Costs to be taxed, unless Notice of Trial be countermanded in Time. *Mich. 1654. sec. 21.*

43. Costs for not executing Inquiry after Notice given, and not countermanded in Time. *Trin. 13 Geo. II. reg. 1.*

44. — of Prosecution on the Bail-Bond to be paid before the Defendant be admitted to plead to the original Action. *Hil. 6 Geo. II.*

45. Sheriffs to return Process in six Days after being served with a Rule, or liable to pay Costs. *Hil. 8 Geo. I.*

46. Costs below on Causes removed, to be considered and cast into the Judgment. *Mich. 1654. sec. 25.*

47. Costs of the Exigent and Fine to be paid before Reversal of Outlawries. *Trin. 33 Car. II. Trin. 2 Ja. II. Mich. 17 Car. II.*

48. Further Costs after Return of the Exigent to be paid before Reversal of Outlawries transcribed into the Exchequer. *Trin. 1 W. & M. Trin. 2 Ja. II.*

49. If the Plaintiff proceed not in two Terms after Notice of Reversal, Defendant to have his Costs. *Trin. 33 Car. II.*

### Covenant (Writ of).

See Fines.

### Countermand.

See Notice. 6, 15, 24.

### Custos Brevisium.

See Error. 19.

1. — his ancient Fees. *Trin. 35 Hen. VI. sec. 6.*

2. — to give Receipts for the Writs and Warrants on Recoveries left with him by the Prothonotaries. *Mich. 29 Car. II.*

### Declaration.

See Alias diff.

Amendment. 3.

Attorney. 6.

Battery.

Clausum fregit.

Homine replegiando. 1.

Notice. 27.

Plea. 21.

Prisoner. 2, 3, 4, 6, 13.

Replevin. 2.

1. Defendant's Attorney bound to receive a Declaration by the By, at the Suit of the same Plaintiff, but not at the Suit of another.

2. On a special Writ the Plaintiff cannot declare by the By, till he has deliver'd a Declaration in the original Action. *Page 58*

3. On Process at the Suit of the Husband only, he cannot deliver a Declaration by the By, at the Suit of himself and Wife. *131*

4. But on Process at the Suit of Husband and Wife, the Husband may deliver a Declaration by the By at his own Suit only. *131*

5. The Time for pleading to a Declaration delivered *De bene esse* not settled. *16*

6. Where a Declaration is left *De bene esse*, Notice thereof and of the Time to plead may be given to the Defendant. *55*

7. On a Writ returnable the second Return of the Term; the Declaration may be delivered *De bene esse*, on the Effoin-Day of Return. *56*

8. A Declaration may be delivered *De bene esse* on the Effoin or Return-Day, or on any Day after, though Rule to plead cannot be given till the first Day of Term. *68*

9. On a Declaration delivered *De bene esse*, the Plaintiff cannot sign Judgment till the Time for Appearance is out. *85*

10. A Declaration may be delivered before the Effoin-Day of the third Term, where the Defendant has not given a Rule to declare at the End of the second Term. *12*

11. The Defendant may call for a Declaration the Term after the Return of the Writ, and sign a Non-pros for the Want of it. *29*

12. The Declaration ought not to be delivered to the Defendant when his Attorney is known. *32*

13. The Plaintiff having entered an Appearance for the Defendant, delivered the Declaration and Notice to the Defendant, though after the Appearance he knew the Defendant's Attorney, held to be well delivered. *50*

14. Where on an *Ac etiam* Writ the Plaintiff by declaring loses his Bail, he may declare in any Action or any County as on a *Clausum fregit*, and deliver as many Declarations the same Term against the same Defendant as he will. *58*

15. Writ served on Defendant in *London*, and Notice of a Declaration and to plead in four Days left for him at his Lodgings in *London*, held good, though the Defendant dwelt in the Country, and lodged only occasionally in *London*. *59*

16. Notice of a Declaration being left in the Office should set forth the Nature of the Action as Debt or Case, but need not set forth the Substance of the Declaration at large. *63*

17. Notice that a Declaration upon a Note under Hand, and for Goods sold was filed in the Office, held to be bad, not setting forth whether the Action was in Debt or Case. *68*

18. When Judgment is set aside for Irregularity, a new Declaration must be delivered. *81*

19. A Declaration left in the Office, and Notice given to the Defendant's Attorney, is the same as if the Declaration itself was delivered to him. *84*

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20. If a Declaration be left in the Office, it is deemed as no Declaration but from the Notice.

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21. Declaration delivered to the Attorney in the Country not good. 101

22. A Declaration shortened by the Court, and Costs paid by the Attorney. 128

23. A Declaration delivered to the Defendant, his Attorney not being to be found, held irregular. 128

24. The Plaintiff may have Leave to amend his Declaration, by adding new Counts any Time before the End of the second Term. 131

25. In Declarations Repetitions of the original Writ to be avoided, and only the Nature of the Action to be repeated. *Mich. 1654. sec. 16.*

26. — Upon an original *Clausum fregit* to mention the Place certainly. *Ibid. sec. 17.*

27. — in Covenant to repeat no more of the Deed than necessary. *Ibid.*

28. — in Statute long Preambles to be forborn. *Ibid.*

29. — on general Statutes not to repeat the Statute. *Ibid.*

30. — in Debt on a Judgment not to repeat the Declaration and Judgment, except against Executors and Administrators. *Ibid.*

31. — to be delivered before the End of the ensuing Term, or a Non-profs may be signed, a Rule to declare being given, and Notice to Plaintiff's Attorney. *Hil. 9 Ann. reg. 3.*

32. — to be delivered before nine in the Evening. *East. 10 Geo. II.*

33. — to be demanded by a Note in Writing. *Mich. 1 Geo. II.*

34. — on special Writs to be delivered four Days before the End of the Term, in order to oblige Defendants to plead in four Days after Rules given. *Hil. 9 Ann. reg. 2.*

35. — in Ejectment to be signed by a Serjeant, and delivered by him to the Secondary in Court. *Hil. 2 Geo. II. See Ejectment.*

36. — on Process returnable the first or second Return of any Term, the Declaration to be delivered with Notice to plead in four or eight Days. *East. 3 Geo. II. Mich. 3 Geo. II. reg. 2.*

37. — such Declarations may be delivered *De bene esse. Ibid.*

38. Where the Plaintiff appears for the Defendant the Declaration is to be left in the Office, and Notice thereof and of the Time of Pleading given the Defendant. *Mich. 1 Geo. II.*

39. The Method of proceeding on Declarations delivered to Prisoners in County Gaols. *East. 5 W. & M. reg. 2. See Prisoners.*

40. Declaration may be left in the Office to save a Nonsuit. *Mich. 1654. sec. 14, 15.*

41. The Plaintiff's Attorney delivering a Copy of a Declaration varying from the original Declaration to bear the Disadvantage. *Mich. 1654. sec. 18.*

42. Declarations may be amended on Payment of Costs, or giving an Impanance. *Ibid. sec. 16.*

43. Originals proper to the Cause of Action to be filed forth before Declaration delivered. *Mich. 30 Car. II.*

44. On tendering a Declaration on Reversal of an Outlawry, or Removal by *Ha. Cor.* the Original to be shewn. *Mich. 1654. sec. 12.*

45. Declarations shall not be given or received on the Exigent till *Superfideas* allowed. *East. 24 Car. II. reg. 1.*

46. — in all Suits to be entred with the Prothonotary. *Mich. 14 Ja. I. reg. 2.*

### Deeds.

See Oyer.

### Demands.

1. — to be made before Nine in the Evening. *East. 10 Geo. II.*

2. Demands of Declarations, Pleas, Oyer of Deeds, &c. to be made by a Note in Writing. *Mich. 1 Geo. II.*

### Demurrer.

See Costs. 21, 28.

Issue. 1.

Money into Court. 3.

Non prof. 2.

Plea. 22, 28.

1. Judgment given for the Plaintiff in Demurrer, though neither Plaintiff nor Defendant had delivered the Paper-Books to the Puisne Judges. *Page 23*

2. The Cause should not be made a *Concilium* before the Demurrer-Book is tendred; but if it is, the Defendant must pay for the Book, or Judgment may be signed. 72

3. After a Rule given to rejoin issuably, the Defendant may demur. 111

4. Leave to withdraw a Demurrer in a particular Case, though the Plaintiff had lost a Trial. 141

5. Plaintiff's Attorney to deliver all the Demurrer-Books to the Judges. *Mich. 6 Geo. II. reg. 3. Former Rule, East. 27 Car. II.*

6. Defendant not to be heard, unless he pay for two of the Books. *Ibid. ibid.*

7. No Cause to be put in the Book of this Court to be argued after the last Day of Arguments, without Order. *Trin. 12 Geo. I.*

8. In Demurrers the Cause of Demurrer to be specially assigned. *Mich. 1654. sec. 21.*

9. — Matters of Form on both Sides discharged, unless specially assigned. *Ibid.*

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*Eject-*

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3. Declaration delivered to the Father of the Tenant, who acknowledged the Receipt of it, good Service. 115
4. Judgment in Ejectment denied for Incertainty in the Affidavit. 107
5. What Affidavit is necessary on an Ejectment, upon *Stat. 4. Geo. II.* 68
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7. If the Rule annexed to the Plea be not stamp'd by the Filacer, the Plaintiff may sign Judgment. 71
8. The Landlord cannot make himself Defendant without the Tenant's Consent. 73
9. The Tenant cannot be compelled to defend, nor may the Landlord for him, without his Consent. 99
10. Landlord made Defendant, the Tenant delivers up the Possession. 155
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12. Judgment being for the Defendant in an Ejectment, where the Lessor of the Plaintiff was a Peeress, an Attachment against her Goods and Chattels was granted for the Costs. 7
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18. What Bail in Error in Ejectment. 152
19. Declarations in Ejectment to be signed by a Serjeant, and by him delivered to the Secondary in Court. *Mil. 2 Geo. II.*
20. Secondary on Request to shew his alphabetical Paper of Ejectments moved in each Term. *Ibid.*

21. On Delivery of a Declaration in Ejectment in *London* or *Middlesex*, the Tenant to be told when to appear. *Trin. 32 Car. II.*

22. Motion for Judgment in such Ejectment to be made in one Week after the first Day of *Michaelmas* or *Easter* Term, and in four Days in *Hilary* or *Trinity* Terms. *Ibid.*

23. No Attorney to be Lessee in Ejectment. *Mich. 1654. sec. 1.*

### Entry (Writ of).

See *Recoveries*.

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See *Amendment*. 5.

*Bail*. 6, 25.

*Ejectment*. 18.

*Nonsuit*. 110.

*Outlawry*. 2.

1. The Allowance of a Writ of Error is a *Superfedeas* from the Time of the Allowance, though the Execution be executed before Notice. Page 35

2. A Writ of Error is a *Superfedeas*, even where the Execution issues before and is executed after the Allowance thereof without Notice. 39

3. A Writ of Error returnable before Judgment signed does not attach the Suit, and the Plaintiff may take out Execution. 50

4. Judgment by *Cognovit actionem* signed after the Return of a Writ of Error, Execution set aside, the Plaintiff's Attorney having promised to sign Judgment on a certain Day which was before the Return of the Writ of Error, but did not. 54

5. Plaintiff deferring to sign Judgment till the Return of a Writ of Error, though called upon, ordered to sue out a new Writ at his own Expence. 71

6. A Writ of Error returnable *Tres Trin'*, Judgment signed in Vacation following, and Execution thereon, held that the Writ of Error attached the Judgment, and the Execution set aside. 57

7. Writ of Error returnable before final Judgment signed does not remove the Record, the Plaintiff may take out Execution. 88

8. Judgment in Debt on a Judgment pending a Writ of Error in the original Action, the Plaintiff may take out Execution of course, unless stayed by Motion. 129

9. Leave granted to take out Execution, the Writ of Error being abated by the Death of the Chief Justice. 128

10. A Prisoner brought up by *Habeas Corpus* charged in Execution, though Writ of Error allowed. 133

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14. A Warrant of Attorney amended after Error brought. 10

15. A Rule set aside for filing a Warrant of Attorney for the Plaintiff after Error brought. 37

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18. Error after Verdict in Ejectment; Plaintiff in Error may either become bound himself, or find Sureties. 142

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20. Writs of Error and *Certiorari* shall be delivered to the Chief Justice before they are broken. *Trin.* 24 *Eliz.*

21. Bail to be put in before Allowance of Writs of Error, or reversing Outlawries. *Mich.* 12 *Geo. I.*

22. Bail to be perfected in four Days after Exception, or Writ of Error non-pros'd. *Mich.* 6 *Geo. II.* reg. 6.

23. Writs of Error to be forthwith brought to the Clerk of the Errors to be allowed, or no Stay of Execution. *Trin.* 28 *Car. II.* *Mich.* 28 *Car. II.*

24. — and special Bail (where required) put in, in four Days after the Delivery, and *Superfedeas* thereupon. *Mich.* 28 *Car. II.*

25. After Allowance and *Superfedeas* no Execution for not transcribing without Certificate from the Clerk of the Errors, that the Plaintiff makes Default. *Ibid.*

26. No Execution *Non obstante brevi de errore* to be sued out till a Certificate had that the Record is not removed, and a *Nonprosi* thereupon signed. *Trin.* 28 *Car. II.*

27. No *Superfedeas* to be made by the Clerk of the Treasury on any Writ of Error until some manifest Error be notified to one of the Justices. *East.* 23 *Eliz.* *Mich.* 6 & 7 *Eliz.*

### Essoin.

1. A Corporation aggregate not intitled to an Essoin in a personal Action. 8

2. No Essoin lies in any personal Action whatsoever, even where a Peer or Member of Parliament is Party. *ibid.*

### Evidence.

See *Ejectment.* 14.  
*Prohibition.* 1.

1. Liberty granted to inspect the Publick Books of a Dean and Chapter, and to take Copies of them. Page 26

2. The Court refused to grant a Rule for an Officer to attend with Muster-Rolls, &c. 6

3. A Motion to inspect Court-Rolls and produce them at the Trial denied. 70

### Exchequer.

See *Privilege.*

### Execution.

See *Baron and Feme.* 1.

*Error.* 1 to 12, 16.

*Prisoner.* 9, 10.

1. *Fi. fa.* into *Middlesex*, and *Testatum* into *London*, the Form of the *Testatum* need not be inserted in the second Writ. 79

2. By Execution on a Judgment upon a Bond the Plaintiff may out of the Penalty levy the Interest and Costs, from the Judgment to the Time the Execution is completed. 90

3. Execution *Non obstante brevi de errore* not to be sued out till a Certificate from the Clerk of the Errors. *Trin.* 28 *Car. II.* *Mich.* 28 *Car. II.*

4. Executions to be signed by a Prothonotary before they are sealed. *Mich.* 1654. sec. 6.

### Executor.

See *Costs.* 13, 14, 15, 16.

*Money into Court.* 1.

*Mutual Debts.* 2.

*Plea.* 18.

*Prisoner.* 7.

### Exemplifications.

1. — to be signed by Prothonotary before Sealing. *Mich.* 1654. sec. 6.

2. — after two Terms to be signed by the Clerk of the Treasury. *Ibid.*

### Exigent.

1. Proclamations thereon to be delivered and duly executed. *Mich.* 1654. sec. 9.

2. — after the Return thereof no *Superfedeas*, until Bail and Costs paid. *Trin.* 2 *Ja. II.* *Mich.* 17 *Car. II.*

3. No *Reddidi se* to be returned thereon, where the Defendant hath not rendered himself, nor *Retraxit* till entered on the Roll. *East.* 24 *Car. II.*

### Exigenter.

— not to receive any *Pluries capias* in order to make an Exigent or Proclamation, unless it be stamp'd by the Clerk of the Warrants. *Hil.* 2 & 3 *Ja. II.*

### Fees.

## A TABLE to the Rules and Cases of Practice in C. B.

### Fees.

See Clerk of the Treasury.  
Custos Brevium.  
Filacer. 12.  
Prisoners.  
Prothonotary.  
Tipstaff.

1. **N**O Fees to be taken for the Return of original Writs, and Process thereupon. *Mich. 17 Ja. I.*
2. Orders (considered of) for preventing the Exaction of excessive Fees. *Hil. 14 Ja. I.*
3. No Officer or Clerk of this Court to take above the old accustomed Fees, but of the Benevolence of the Party or his Attorney, on Forfeiture of ten Shillings. *Mich. 15 Eliz.*

### Filacer.

1. Filacers to attend their Offices, unless excused by the Chief Justice. *Trin. 35 H. VI.*
2. — not to set any Clerks in their Places, without the Leave of the Chief Justice. *Ibid.*
3. Filacer to be present on taking special Bail. *Trin. 1 W. & M. reg. 2.*
4. — or in his Absence a true Abstract of the Writ must be brought to the Judge's Chambers. *Hil. 8 Geo. II.*
5. Rules to bring in the Body to be given by the proper Filacer. *Trin. 2 W. & M. reg. 2.*
6. Appearances to be entered with the proper Filacer. *East. 24 Car. II. reg. 2.*
7. — they may peruse the Prothonotary's Dockets, &c. for discovering Offenders. *Ibid.*
8. — to procure the Original to be duly sued forth and filed according to their Oath. *Trin. 1649.*
9. — to stamp the Writs issuing out of their Offices. *Ibid.*
10. The first *Capias* on every original Writ to be entered by the Filacer, and endorsed before Sealing. *Mich. 14 Ja. I.*
11. A Declaration of what Writs, Process and Entries are to be made by the Filacers only. *Mich. 14 Ja. I.* Former Rules, *Trin. 24 Eliz. Mich. 15 & 16 Eliz.*
12. — his antient Fees. *Trin. 35 H. VI. ser. 8.*

### Fines.

1. A Fine passed as acknowledged by Baron and Feme set aside as to the Wife, it being found on a feigned Issue that the Wife did not acknowledge it. *Page 12*
2. A Fine acknowledged in Court by a Person that was deaf and dumb. *19, 23*
3. A Fine acknowledged five Years ordered to pass on Notice to the surviving Cognisor, one being dead. *74*
4. A Fine allowed to pass though the Wife died the Day after the Caption, the King's Silver being paid. *76*
5. Fines amended. *9, 10, 52, 121*

6. Writs relating to Fines and Recoveries to be duly returned and filed. *Trin. 22 Car. I.*
7. None but Attorneys of the Court or a Justice's Clerk to sue out Fines. *Hil. 14 Ja. I. East. 43 Eliz. Trin. 24 Eliz. Mich. 15 Eliz.*
8. No Fine acknowledged before Commissioners to pass, unless one that was present appear before a Judge to be examined on Oath. *Hil. 13 Geo. II. East. 9 Ann.*
9. No Fine in which a Rasure in the Date of the Caption appears shall pass, without an Order under a Judge's Hand. *East. 9 Ann.*
10. — or any Rasure or Alteration be made after passing, without the like Order. *Ibid.*
11. No Writ of Covenant in *London* or *Middlesex* to pass the Return-Office till a Note of all the Particulars be given the Clerk, that the *Post Fines* may be levied. *East. 6 W. & M.*
12. Caveats for stopping Fines acknowledged by Persons disabled in Law, to be renewed every Term, and Copies thereof left with the Clerk of the King's Silver. *East. 29 Car. II. Hil. 28 & 29 Car. II.*

### Forejudger.

— not to be entered till four or eight Days after Notice of a Bill filed, and a Rule given. *Hil. 11 Geo. II. reg. 3.*

### Formedon.

See *Casts.* 28.

### Gaolers.

**G**Aolers or Keepers of Prisons concealing Declarations delivered against Prisoners liable to Attachments. *East. 5 W. & M. reg. 3.*

### Grand Cape.

See *Dower.* 2.

### Habeas Corpus.

See *Bail.*  
*Homine replegiando.* 3.  
*Prisoner.* 5, 11.

1. **T**HE Plaintiff cannot remove his Cause by *Habeas Corpus.* *Page 3*
2. A Sheriff allowed more than 12 *d.* per Mile for bringing up a Prisoner who was a dangerous Person, and therefore an extraordinary Guard had. *8*
3. A *Habeas Corpus* return'd on a *Sunday*, Prisoner committed the next Day. *108*
4. The Court will not receive a Prisoner before the Return of the Writ. *ibid.*
5. A Prisoner brought up by *Habeas Corpus* at his own Instance remanded, because he refused to pay the Gaoler's Fees. *110*
6. All *Y y*

## A TABLE to the Rules and Cases of Practice in C. B.

6. All Writs of *Ha. Cor. cum causa* returnable in Court, to be returnable at a Day certain. *Hil.* 13 & 14 *Car.* II. *Mich.* 1654. *sec.* 10, 11.

7. Writs of *Ha. Cor. cum causa* to the inferior Courts of London, or within five Miles thereof, may be returnable *immediate*. *Ibid.* *ibid.*

8. If no Bail be put in in eight Days after Allowance of *Ha. Cor.* a *Procedendo* may be granted. *Mich.* 1654. *sec.* 11.

9. *Ha. Cor. ad respondend'* or *ad faciend'* returnable in Court may be granted to the Warden of the Fleet, or Keeper of an inferior Prison, and be a good Cause of Detainer. *Mich.* 1654. *sec.* 10.

10. Prisoner charged with Causes in other Courts may be committed with those Causes. *Ibid.*

11. Commitments to the Fleet on *Ha. Cor.* to be duly filed with the Prothonotary, on Penalty of being put out of the Roll. *Mich.* 1649. *reg.* 2.

### *Habeas Corpora.*

See *Verdict.* 3.

### *Heir.*

An Heir may be sued by a *Clausum fregit*, and need not be named as Heir in the Writ. Page 8

### *Homine replegiando.*

1. The Proceedings in a *Homine replegiando.* 39, 83

2. If the Plaintiff be nonsuited in a *Homine replegiando*, the Defendant shall have Costs. 39

3. Defendants taken on a *Capias in Withernam* brought into Court by *Habeas Corpus* and bailed. 83

### *Imparlance.*

See *Attachment.* 2.  
*Plea.* 9.

1. Actions for Words touching the Murder of Defendant's Husband, *Imparlance* granted, Plaintiff being in Custody for the Crime. 139

2. In special Actions the Plaintiff may enter *Imparlances* the Term following, with an *Incipitur*. *Mich.* 1654. *sec.* 14.

3. Other *Imparlances* to be duly entered before any Issue, Demurrer or Judgment. *Ibid.*

4. Where Defendant is bound to accept a Declaration with an *Imparlance*. *Ibid.*

5. When an *Imparlance* of Course, and when not, without Consent or Rule of Court. *Ibid.*

6. When a Prisoner shall have an *Imparlance* of Course. *Hil.* 14 & 15 *Car.* II. *reg.* 3.

7. An *Imparlance* for want of Entering an *Imparlance* or *Incipitur*. *Trin.* 21 *Car.* II. *reg.* 2.

8. When Defendants must plead without *Imparlance*. *Mich.* 3 *Geo.* II.

### *Incipiturs.*

See *Imparlance.*

### *Infant.*

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No Admission is necessary to sue by *Prochein amy.* Page 11

### *Information.*

See *Attorney.* 20.

### *Informers.*

See *Qui tam.*

### *Inquiry.*

See *Writ of Inquiry.*

### *Inquisitions.*

On signing Judgment the Inquisition on the Writ of Inquiry to be left with the Clerk of the Judgments. *Trin.* 13 *Geo.* II. *reg.* 2.

### *Interest.*

1. The Jury may give Interest on a Note from the Time the Money was lent. 42

2. On a Note payable a Month after Date, Interest ought to be given from the Expiration of the Month until the Commencement of the Suit. 45

### *Interrogatories.*

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*Contempt.* *Ibid.*  
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### *Irregularity.*

1. Motion to set aside an interlocutory Judgment for Irregularity, made the Day before the Writ of Inquiry was to be executed, denied, as coming too late. 69

2. After an Action brought on a Non-profs, and Judgment obtained thereon, too late to complain of the Irregularity of the Non-profs. 75

3. An Irregularity in the Plaintiff's appearing for the Defendant must be complained of before Judgment signed. 92

4. Irregularity in the Service of Process to be complained of before Judgment. 105, 115

5. Motion to set aside a Judgment should be made two Days before the Execution of the Writ of Inquiry. 145

*Issue.*

## A TABLE to the Rules and Cases of Practice in C. B.

### Issue.

See *Amendment.* 8, 9.  
*Ejectment.* 17.

1. Plaintiff may sign Judgment for refusing to pay for the Copy of the Issue or the Demurrer Book, except where the Defendant is a Prisoner, and no Attorney is concerned.

Page 35

2. Replication not delivered in Term; nor Rule given to rejoin, but Defendant having agreed to accept the Issue as delivered, held he had waived the Form of the Replication, &c.

46

3. If the Declaration and Issue be of one Term, the Defendant shall not pay for two Copies of the Declaration.

91

4. Though the Issue be over-charged the Defendant must pay for it, and then may apply to the Court.

93

5. Judgment signed for not paying for the Issue set aside, it being tendered to the Attorney in the Country, and not to the Agent in Town.

94

6. Issues to be entered of Record the same Term they are joined. *Mich.* 13 *Geo.* I. *East.* 5 *W. & M.*

7. On Trials at Bar Copies of the Issue to be delivered to the Judges four Days before the Time of Trial. *Mich.* 2 *Geo.* II.

### Judgment.

See *Amendment.* 1.  
*Irregularity.* 5.  
*Verdict.* 2.  
*Slander.* 2.

1. Judgment on a Warrant of Attorney cannot be entered after Defendant's Death.

6

2. Judgment by Warrant of Attorney may be entered after Defendant's Death, if he died after the first Day of the Term.

11

3. Judgment not to be signed for want of a Plea, and till the Afternoon of the next Day, after a Demand thereof in Writing.

17

4. Judgment cannot be signed till the Afternoon of the Day after the Rule to plead is out.

54

5. Judgment by Warrant of Attorney, within what Time to be entered.

69

6. Judgment set aside, the Demand of a Rejoinder being made on a former Agent concerned for the Defendant's Attorney, and not on the Agent concerned in the Cause.

71

7. Judgment of above a Year's standing must be revived by *Sci. fa.* though the Plaintiff was tied up by an Injunction out of Chancery.

82

8. Warrant of Attorney to confess a Judgment by a Person in Custody, and no Attorney present, held to be good, he being an Attorney.

94

9. Judgment signed too soon waived without Motion. *Page* 124

10. A Non profs signed irregularly, and the Plaintiff intitled to Judgment; he may sign it without first setting aside the Non-profs.

125

11. Judgment and Execution on a Warrant of Attorney taken of a Prisoner set aside, no Attorney for the Defendant being present.

128

12. Judgment on Warrant of Attorney of above two Year's standing entered, on Affidavit that the Defendant was alive.

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13. No Motion to set aside Judgment on the last Day of the Term, if the Defendant could have applied sooner.

130

14. Judgment entered *Nunc per tunc.*

143

15. Judgment signed; but not entered of Record.

156

16. Warrant to confess Judgment of a Prisoner must be in Presence of an Attorney on his Behalf.

158

17. Judgments to be signed only in the Prothonotaries Offices. *Mich.* 6 *Geo.* II. *reg.* 4.

18. On signing Judgments the Day of the Month to be set down on the Paper-Book, and entered on the Roll. *Trin.* 29 *Car.* II.

19. — and the Paper-Book produced on bringing in the Roll. *Ibid.*

20. Judgment by Confession not to be signed unless brought to the Prothonotary within twenty Days after Trinity, Michaelmas or Hilary Term, or before the first Day of Trinity Term. *Trin.* 29 *Car.* II. *reg.* 5.

21. — or unless the Warrant of Attorney bear Date after the End of any Term; and then Judgment may be signed any time before the Effoin-Day of the subsequent Term. *Ibid.*

22. In popular, real and mixed Actions, no Judgment without Motion. *Mich.* 1654. *sec.* 15.

23. No Judgment by *Nil dicit* until Rule given to plead, and the Day be past. *Ibid.*

24. Where Deeds must be shewn, else no Judgment on Nonsuit. *Mich.* 1654. *sec.* 15.

25. Judgment on *Nul tiel Record* may be entered without Motion, no Variance appearing. *Mich.* 1654. *sec.* 15.

26. Costs to be taxed by the Prothonotary on Judgments by *Non sum informatus*, or *Nil dicit*, before the Judgment be entered. *East.* 11 *Ja.* I.

27. After an Imparlance of three Terms, no Judgment without a Term's Notice. *Mich.* 1654. *sec.* 15.

28. In Causes removed by *Ha. Cor.* the Costs below to be considered and cast into the Judgment. *Mich.* 1654. *sec.* 25.

29. In Judgments on *Non sum informatus* & *nil dicit* in Ejectment, the *Capiatur* to be entered on the first Judgment. *Ibid.*

30. Principal not to give Warrant to appear for or confess Judgment against his Surety. *Ibid.*

31. On signing Judgments the *Poffea* or Inquisition to be left with the Clerk of the Judgments. *Trin.* 29 *Car.* II. *reg.* 5. *Trin.* 13 *Geo.* II. *reg.* 2.

32. No Judgments (except final Judgments upon *Poffea's* and Writs of Inquiry and *Non-profs's*) to be signed, unless the Stamp of the Clerk of the Warrants be first impressed on the Judgment-Paper. *Mich.* 5 *Geo.* II.



## A TABLE to the Rules and Cases of Practice in C. B.

33. When Judgment may be signed for want of a Plea. *Mich. 3 Geo. II. reg. 2. East. 3 Geo. II. Mich. 1 Geo. II.*

34. Judgment may be signed on Defendant's Attorney refusing to pay for filing the Warrant of Attorney. *Hil. 2 & 3 Jac. II. — or refusing to pay for the Copy of the Issue or the Entry of the Defendant's Plea. Ibid.*

35. The Clerk of the Effoins to dogget Judgments, on Penalty of 100 l. *East. 5 W. & M. reg. 2.*

### *Jurata.*

See *Amendment.* 11.

### *Jurisdiction.*

1. The Plaintiff's Demand under 40 s. he may amend his Declaration. *Page 74*

2. The Debt 21 s. Damages 100 s. the Damages give Jurisdiction. *79*

### *Jury.*

See *Costs.* 5, 41.  
*Trial.*

1. A Quaker fined for refusing to be sworn on a Jury. *103*

2. The Charge of striking a special Jury are to be paid by the Party who applied for the special Jury, but the other necessary Charges are to be allowed. *138*

### *London.*

**D**efendant an Inhabitant in *London*, and Debt under 40 s. a Judgment having been signed and set aside on Terms of going to Trial, the Benefit of Costs by *Stat. 3 Jac. I. c. 15.* is waived. *70*

### *Marshal of the Marshalsea.*

See *Prisoners.*

### *Mittitur.*

See *Error.* 12.

### *Money, &c. paid into Court.*

1. Money paid into Court by an Executor delivered again to him out of Court, the Plaintiff being nonsuited; *aliter* if he had not been an Executor. *5*

2. If the Plaintiff be nonsuited after Money paid into Court, the Defendant shall not have it back. *36*

4

3. On an Ejectment; Motion to bring 100 l. into Court, to answer a Fine, denied. *Page 42*

4. In Trespass and Assault, and for taking away 1 s. Motion to bring the Shilling into Court. *46*

5. The Defendant shall not pay Money into Court on one Promise and Demurrer to another. *48*

6. Six Shillings and three Pence paid into Court, and Verdict for the Defendant allowed to take it out, in part of his Costs. *54, 117*

7. In Trover a Note brought into Court. *59*

8. Money cannot be paid into Court after Judgment set aside, on Payment of Costs. *85*

9. Motion to pay Money into Court but not brought in till three Terms after, Proceedings set aside, upon Payment of Costs by the Defendant. *93*

10. Of Costs on paying Money into Court. *120*

11. The Defendant cannot have the Money back, though the Plaintiff die before the Trial. *129*

12. Goods when cumbersome not to be brought into Court, but Plaintiff must shew Cause why he will not accept them, and Costs. *130*

### *Motion.*

See *Attachment.* 1.

*Judgment.* 12.

*Notice.* 18, 25, 26.

*Verdict.* 2.

*Trial.* 2, 8.

### *Mutual Debts.*

1. Indorsement on the Back of the Record, that 13 l. was due to the Plaintiff, but on balancing Accounts there was due to the Defendant 13 s. held to be a good Verdict, and the Defendant intitled to Costs. *65*

2. Where an Executor sues in his own Right, the Defendant cannot set off a Debt due from the Testator. *151*

### *Ne Recipiatur.*

See *Costs.* 32.  
*Trials.*

1. **I**N *London* and *Middlesex* *Ne recipiatur* may be entered after Eight o'Clock in the Evening, the Day next but one before the Day of the Sitting. *37*

2. — may be entered for the Sittings after Term, unless the Records of *Nisi prius* and Writs be made up and brought into Court on or before the Days of Sittings. *Hil. 8 Geo. I. reg.*

3. — may be entered in *London* and *Mid. dlesex*, unless the Cause be entered in the Marshal's Book

## A TABLE to the Rules and Cases of Practice in C. B.

Book two Days exclusive before the Day of Trial.  
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### Nonpross and Nonfuit.

See *Irregularity. 1.*  
*Judgment. 9.*

1. The Rule and *Nonpross* for want of a Declaration ought to be in that Prothonotary's Office wherein the Plaintiff's Attorney practices. Page 53

2. *Non assumpsit* as to Part and Issue on Demurrer; as to other Part, *Nonpross* for want of Replication set aside on Payment of Costs, a *Respondas Ouster* being awarded on the Demurrer. 83

3. Plaintiff nonsuited at Trial dies before the Day in Bank, if Judgment be signed, after his Death, it is reversible by Writ of Error; but not to be set aside by Motion. 110

4. How and in what Time a *Nonpross* may be signed for want of a Declaration. *Hil. 9 Ann. reg. 3. Former Rules, Mich. 1654. sec. 14 & 15.*

5. Writ of Error nonpross'd; for not perfecting Bail. *Mich. 6 Geo. II. reg. 6.*

6. Where Deeds must be shewn before Nonfuit. *Mich. 1654. sec. 15.*

### Notice.

See *Declaration. 6, 13, 15, 16, 17, 19, 20.*

*Ejectment. 15.*

*Inquiry.*

*Plea. 21.*

*Process. 7, 11.*

*Replevin. 2.*

*Trial. 1.*

1. Notice to appear in the Copy of Process must be for the Appearance-Day, and not the Return Day. 92

2. Process served without Notice, Proceedings stayed. 100

3. The Notice to appear should be for the Effoin-Day, though *Sunday*. 97, 98, 100

5. Notice is to be given of executing a *Sci. fi.* Inquiry. 1

6. Notices of Trials, and Inquiries and Countermands thereof, are to be in Writing. 3

7. Though interlocutory Judgment be signed above a Year since, yet only common Notice of executing a Writ of Inquiry need be given. 4

8. Where there are two Defendants, and the Plaintiff appears for them, Notice of Inquiry must be given to both. 94

9. A Writ of Inquiry, executed above a Year after the interlocutory Judgment, was set aside, because a Term's Notice was not given. 97

10. A Writ of Inquiry set aside for Incertainty in the Notice. 99

11. Writs of Inquiry set aside for Incertainty in the Notice as to Time and Place. 113

12. Inquiry set aside for Incertainty in the Notice. Page 135

13. Notice ought to be given of executing a Writ of Inquiry of Damages in Dower. 14

14. Where the Defendant's Attorney is not known, Notice of Trial or of executing a Writ of Inquiry may be given to the Defendant. 62

15. Notice of Trial for the Affices may be countermanded in *London*. 48

16. On an Issue of above a Year's standing a Term's Notice of Trial must be given, and be deliver'd before the Effoin-Day. 66

17. The Rule of fourteen Days Notice of Trial shall not be altered upon the Defendant's coming to *London* for a few Days. 72

18. Notice to put off a Trial should be made two Days before the Day of Trial. 98

19. Verdict set aside for want of fourteen Days Notice of Trial, the Defendant living in *Ireland*. 111

20. Notice of Trial must be given in Town, but Countermand may be given either in Town or Country. 120

21. Where the Plaintiff ought to give the Defendant fourteen Days Notice of Trial, the Defendant ought to give the like Notice where he tries the Cause by Proviso. 124

22. Where Issue has been joined above a Year, Plaintiff or Defendant must give a Term's Notice of Trial. 2

23. Such Notices to be given before the Effoin-Day of the Term; but when there has been an intermediate Proceeding, as Notice of Trial or the like, then only common Notice is necessary. ibid.

24. Countermand of a Notice of Trial not good on a *Sunday*. 15

25. Notice must be given of Motion to enlarge a Rule, for shewing Cause, when the Time for shewing Cause is expired. 67

26. On the last Day of Term no Motion in Arrest of Judgment without Notice. 106

27. Notice of a Declaration bad, not saying whether in Debt or Case. 122

28. Notice to be given before Nine in the Evening. *East. 10 Geo. II.*

29. In Notices to appear the Day of the Return of the Process to be inserted, though it be *Sunday*. *Hil. 7 Geo. II.*

30. Notice to be given of Motion to enlarge a Rule for shewing Cause, and Affidavit made of such Notice. *Mich. 2 Geo. II.*

31. Notice of executing Inquiry may be given on the Back of the Demurrer, or Joinder in Demurrer. *Trin. 10 Geo. I.*

32. ——— Defendant obliged to accept of Notice of executing Inquiry from the Time Notice of Trial was given. *Hil. 6 Geo. I.*

33. The Plaintiff's Attorney to give timely Notice to the Court of Trials at Bar. *Hil. 8 Ann.*

34. When eight Days Notice of Trial or Inquiry must be given, and when fourteen Days Notice. *Mich. 1654. sec. 21.*

35. Where new Notice must be given. *Ibid.*

## A TABLE to the Rules and Cases of Practice in C.B.

36. When a Term's Notice must be given. *Mich.* 1654. *sec.* 21.

37. Proof of Notice to lie on the Party bringing the Cause to Trial. *Ibid.*

38. Countermand of Notice of Trial at Assizes to be given two Days before the Commission-Day. *Mich.* 3 *Geo.* I. *Mich.* 1654. *sec.* 21.

39. Countermand of Notice of executing Inquiry to be given in the same Manner as Countermand of Trial. *Trin.* 13 *Geo.* II.

40. After an Imparance of three Terms no Judgment without a Term's Notice. *Mich.* 1654. *sec.* 15.

### Officers of the Court.

1. The Officers of this Court to attend their several Offices, unless excused by the Chief Justice. *Trin.* 35 *H.* 6.

2. — are not to set any Clerk in their Places without the Licence of the Chief Justice. *Ibid.*

3. — not to make or suffer any Process or Entry to be made in the Name of any Attorney put out of the Roll, or not sworn. *Hil.* 14 & 15 *Car.* II. *reg.* 2.

### Original.

See *Error.* 19.

*Process.* 1, 10.

1. A Return made to a special Original after it was filed. Page 19

2. Original to be shewn upon tendering a Declaration on the Reversal of an Outlawry, or a Removal by *Ha. Car.* *Mich.* 1654. *sec.* 12.

3. — must not vary from the Action. *Ibid.*

4. — on *Habeas Corpus* to County Towns where Judges seldom come, the Action must be laid in the County where the Town lieth. *Ibid.*

5. The Originals to be sued forth before Declaration delivered. *Mich.* 30 *Car.* II.

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### Outlawry.

See *Plea.* 1, 15.

1. The Defendant has till the *Quarto die post* to appear to the Exigent. Page 28

2. On allowing a Writ of Error to reverse an Outlawry, the Defendant must enter into a Recognizance to satisfy the Condemnation-Money.

3. A *Cap. utlegat.* cannot be sued out after the Death of the Defendant. 29  
36

4. If a Person visible be outlawed in the same Country where he dwells, the Court will not oblige the Plaintiff to reverse the Outlawry; *aliter*, if in another Country. 61

5. Outlawry in a foreign Country regular, if in the County where the Action arose. 78

6. A *Capias utlegatum* executed on Sunday; the Defendant discharged, but an Attachment denied. 90

7. What Proof of Defendant's being a visible Person necessary to set aside an Outlawry. Page 151

8. No Writ of Error for reversing an Outlawry to be allowed, unless some manifest Error be shewed the Court or some of the Justices, and by them allowed. *Trin.* 24 *Elix.*

9. Writs of Proclamation on Exigents to be carefully delivered and duly executed by the Sheriff. *Mich.* 1654. *sec.* 9.

10. On reversing Outlawries an Attorney on Record to be present. *Mich.* 1654. *sec.* 13.

11. — how to be pleaded. *Ibid.* *sec.* 10.

12. Bail to be put in before the Reversing any Outlawry. *Mich.* 12 *Geo.* I. Former Rule, *Hil.* 2 *Car.* I.

13. Upon Reversing any Outlawry the Defendant to pay only the usual Costs of the Exigent, and the Fine on the original Writ. *Trin.* 32 *Car.* II.

14. Further Costs respited till Judgment. *Ibid.*

15. Further Costs to be paid before the reversing Outlawries transcribed into the Exchequer. *Trin.* 1 *W. & M. Trin.* 2 *Ja.* I.

16. No Outlawry after the Plaintiff's Death or Marriage to be reversed till Appearance or Bail. *Trin.* 2 *Ja.* II.

17. — provided the Plaintiff's Attorney in fourteen Days after Notice deliver the Name of the Executor, &c. of such Plaintiff, &c. to the Prothonotary. *Ibid.*

18. No *Superfedeas* after the Return of the Exigent to be allowed by any Sheriff till Costs be paid. *Ibid.* & *Mich.* 17 *Car.* II.

19. Upon reversing every Outlawry special Bail to be put in, if the Debt or Damages be ten Pounds, *ibid.* and Costs paid or left in Court. *Ibid. ibid.*

20. Sheriffs not to enlarge Persons arrested on *Ca. utlegat.* without *Superfedeas.* *Ibid. ibid.* *Hil.* 15 & 16 *Car.* II. *Hil.* 2 *Car.* I.

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(2)

**R U L E S,**  
**ORDERS and NOTICES,**

I N

**The Court of Common Pleas**

At *W E S T M I N S T E R*:

From the 35th of King H E N R Y VI.  
to *Hilary* Term the 15th of  
King G E O R G E II. 1741.

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*Carefully Examined by the ORIGINALS;*

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With proper NOTES and REFERENCES : And a Compleat  
TABLE to the Whole.

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In the S A V O Y :

Printed by H E N R Y L I N T O T, (Assignee of *Edward Sayer, Esq;*) for  
*J. Stephens*, at the *Hand and Star* in *Fleetstreet*; *J. Worrall*, at the *Dove*  
in *Bell-Yard*; *C. Ward* and *R. Chandler*, at the *Ship* without *Temple-Bar*;  
*J. Wood*, at the End of *Pope's Head Alley* in *Cornhill*; and *C. Waller*, in  
the *Middle-Temple Cloysters*. M.DCC.XLII



To the Right Honourable  
*Sir* JOHN WILLES, *Kt.*

Lord Chief Justice of his Ma-  
jesty's Court of Common  
Pleas,

A N D

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| 1710 Hil. 9 Anne.         | — Notice of Trial at Bar.                        | — ibid. — reg. 3.         | — Notice of Bill filed against an Attorney.             |
| — ibid. — reg. 2.         | — the Delivery of Declarations on special Writs. | 1740 East. 13 Geo. II.    | — Affidavits sworn before the Plaintiff's Attorney.     |
| — ibid. — reg. 3.         | — signing non pro's.                             | — ibid. — reg. 2.         | — the giving a Term's Notice of Trial.                  |
| — ibid. — reg. 4.         | — Prosecutions on Bail Bonds.                    | 1740 Hil. 14 Geo. II.     | — Trials in the Circuits, and entering Causes.          |
| 1715 Mich. 2 Geo. I.      | — bringing in Rolls.                             | 1741 Trin. 14, 15 Geo. H. | — Warrants of Attorney.                                 |
| 1716 Trin. 2 Geo. I.      | — Notice of Trial.                               |                           |                                                         |
| 1716 Mich. 3 Geo. I.      | — Countermand of Trial.                          |                           |                                                         |
| 1719 Hil. 6 Geo. I.       | — Notice of Inquiry.                             |                           |                                                         |
| — ibid. — reg. 2.         | — entering Appearances and Bail.                 |                           |                                                         |
| 1721 Hil. 8 Geo. I.       | — Sheriffs returning Procefs.                    |                           |                                                         |
| — ibid. — reg. 2.         | — entering Ne recipiatur.                        |                           |                                                         |
| 1722 East. 8 Geo. I.      | — discharging Prisoners for want of Prosecution. |                           |                                                         |
| 1724 Trin. 10 Geo. I.     | — Notice of Inquiry.                             |                           |                                                         |
| 1724 Hil. 11 Geo. I.      | — making up Issues of the proper Term.           |                           |                                                         |
| 1725 Mich. 12 Geo. I.     | — Bail on Error or Outlawry.                     |                           |                                                         |

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# RULES and ORDERS

## OF

### The Court of Common Pleas,

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Trinity Term the 35th of Henry  
the VIth. 1457.

#### *Bancus Communis.*

**H**ereafter do ensue the good *Ordinances* and *Rules*, made as well by the Kings Justices of this said Court of the Common Place in Time past, as by the said Justices now being, for the good Rule and Order of this said Court, which same now Justices do charge and (a) command every of the said Officers and Attorneys, surely, well and truly to observe and keep, upon the Pains limited in the afore said Ordinances.

The Orders following Inrolled in the Term of the *Holy Trinity* in the 35th Year of the Reign of King Henry the VIth after the Conquest, *Rol. 494.* as it there appears, *John Prisot*, then Chief Justice of the Common Bench, and *Nicholas Ayston*, *Peter Arden*, *Robert Danvers*, *Robert Danby*, *Walter Moyle* and *John Nedeham*, Justices of the said Bench.

Memorandum, *That forasmuch as great Troubles, Subtilties, Falsehoods and Disceits, have been caused and done before this Time in the King's Court of the Common Place, as well for lack of Attendance of the Officers of the same Place, as by comers and sitters within the same, that be not sworn, ne have not to do within, there ben certen Ordynances made at this Uras of St. John the Baptist in the Tear of the Reign of King Henry the Sixth after the Conquest the thirty fifth, by John Prisot Chief Justice of the said Place, by the Advice of all the Judges of the same, in Form following :*

#### *Prothonotaries and Officers.*

1. *First*, That every Prenotarie, Philizer, Exigenter, Kings Clerk, and every other Officer of the same Place, such and they and their Predecessours have used to occupy their Offices in their proper Persons, and they or their Deputies sworn that have used to occupy their Offices by their Deputies, from henceforth attend upon their said Offices in their Places accustomed for the same, and occupy them in their proper Persons, upon pain of Forfeiture and lesing of their said Offices. Alwayes forseen, that if any of the said Officers for Sicknes or other Causes reasonable be licensed or excused by the Chief Justice of the same Place for the Time being, that he be not prejudised by this Ordynance.

2. *Item*, That none of the said Officers or Deputies take upon them to licence or do set any Clerk or other in any of their Places, or by them to occupy their said Offices, or for any other Cause, without Licence of the Chief Justice for the Time being, saving such as ben accustomed to have their Clerks sitting by them, that is to weet, everych of the Prenotaries two Clerks, the Clerk of the Streets two Clerks, the Keeper of the Writs or his Deputy one Clerk, upon pain of Imprisonment and making Fine to the King therefore ; Norther that ne Man take upon him to syt within the said Common Place, that is no Officer that hath no Place within, without leave of the said Chief Justice, or Justices, upon the same payn.

#### *Attorneys.*

3. *Item*, That none Attorney, ne none other make any manner of Writ or Process in any Officers Name of the same Place, saving only every Officer in his owen Name, ne intromyte

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(a) Note ; By the Rule of Court, Mich. 1654. *Set. 25.* It is further ordered, That all former Rules and Orders not thereby altered, suspended or annulled, be likewise observed and put in Execution.

mytte in any other Man's Office, ne of any thinge that perteyneth therto, without leave of the Chief Justice of the same Place for the tyme beinge, or of the same Officer in whose name he writteth, and the same Officer will allow and affirm the same, upon payne of Imprisonment, and making Fyne to the Kinge, as is aforesaid.

*Warrants of Attorney.*

4. **M**emorandum, For as much as many grete inconvenyences and errors daylie be founden aswell in the Kings-Benche, as in the Common Place, for non putting in of Warrants of Attorney, yt is ordeyned and agreed by the Assent of all the Justices of bothe the said Places, That in every Plee or Ympar lance entred by any Person as Attorney in any of the said Courts, that he so named Attorney put in his Warraunt the same Term of Plee or Ympar lance, under payne of forgoeing the Office of Attorneship of that Place, and to be commyt to Prison, and to make Fyne after discretion of the Judges where any such disceit shall happen to fall. (a)

5. Hereafter do ensue the Fees belonging to the Prenotaries, Keeper of the Wryts, the Clerks of the Treasure-howse, and hys Clerks, and the Phylizers for comen Proceffe.

*Prenotaries for entres of Plees and Judgments.*

**I**mprimis, for every Comen Declaracyon, comen Plee in Batre, comen Replicacyon and comen Rejoynder in Plees personal, whether the Defendant appear in proper person or by Attorney, xii. s. ii. d. (b) And for every Plee real, ii. s. And for every Plee personal pleded by a Serjeant, li. s. And if it be matter conteynynge a hole Rolle or more, both parties to pay for a Rolle, after the rate of every Rolle, vi. s. viii. d. And for every Judgment or satisfaction in Actions personal, li. s. And for every Judgment or satisfaction in Actions real, liii. s. And for every Exemplification in Writs of Entre upon Vouchers or confession, ii. s. And to the writer of the same Exemplification, viii. d. And for every other Exemplification upon a double Voucher, liii. d. And to the writer of the same Exemplification, xii. d. And for every other Exemplification of grete length to take for the same after the rate of the length thereof.

*Custos Brevium.*

6. **I**mprimis, Yt is considered, that by reason of Writs put in after the day, many men be arrested, to the grete rebuke of Attorneys, and Sclaunder of the Court, wherefore there is set a direction by the Court, that

none Original Writ nor *Plur. Cap.* be put in after the last day of the Term.

*Item*, The said Officer ought daily to bring to the Court the bundel of Writs of the Term present to be seen and occupied by such as have Authority so to do, without any thing paying therefore.

*Item*, for seing a bundel of the last Term, he ought to have but i. d. *Item*, For seing a bundel of every other old Term he ought to have but v. d. *Item*, He ought to have nothing for any Exigent, though it cometh in returned after the Day, because it is for the Kings advantage. *Item*, He ought to give Attendance in his owne person, or by his sufficient Deputy at all convenient times, that Officers may take out Writs for proceffe and other necessary causes, without any money paying therefore. *Item*, He ought to take for the receyt of a hole retorne of one shire comeing in after the day, viii. d. *Item*, He ought to take for the retorn of an Exigent returned utlawed in an old Terme, xx. d.

*The Clerke of the Tresourhowse and his Clerks.*

7. **I**mprimis, For Exemplifications and writing of the same, to take therefore as afore hit is limited to the Prothonotaries, and nothing to be paid for the serch yf the parte bring the Number Rolle with him. *Item*, For every Record of *Nisi Prius*, ii. s. i. d. *Item*, To the Secondary for writeing and examining of the same, liii. d. *Item*, For a *Sci. fac.* upon a Charter of Pardon, vi. d. *Item*, For a *Supers.* upon Mainprize, which shall not be taken except the Defendant be in proper person, ii. s. *Item*, For a Bill of Bayle thereupon, liii. d. *Item*, For writeing, examining and certifyinge of every Writ of Error, xii. s. i. d. *Item*, For the Fees of a Charte of Pardon upon an Utlawry vi. s. xi. d. that is to say, for the Certificate of the Record, 2 s. i. d. and to the Warden of the Fleet, 2 s. 4 d. and for his favour 20 d. and for the *Sci. fa.* 6 d. and for the Bill of Baile 4 d. *Item*, Officers and Attorneys ought to see the Essoine Rolles and other Rolls, of old Terms for the assurance of their Matters and proces, without any thing therefore.

*Phylizer for Commen Proceff.*

8. **I**mprimis, for every *Cap. Pone* and distresse in Actions of Debt, Detinue, Account and Trespace of comen Proces, iii. d. *Item*, For a *Cap.* and a *Pone*, or a *Cap.* and a Distresse in one Writ, in every of the said Actions, vi. d.

(a) See *Mich. 1654. fol. 9, 13. Hil. 14 & 15 Car. II. Hil. 2 & 3 Jac. II.* (b) Rather xii d. or xii d. ii q.

upon a Verdict or demurrer in Law ; untill some manifest pregnant Error therein be notified by the Party or some of his Councell that sueth the writ of Error, unto the Justices of the Bench, or to one of them at the least. (a)

James Dyer, } { Richard Weston,  
Anthony Breim, } { John Welch.

Easter 9 Eliz. 1567.

**R**eformatio omnium & omnimod. Falsitatum, Contempti, Misprisionum, ac aliarum Enormitatum Officiariorum, Clericorum, Attorn', ceterorumq; Ministrorum Curie Domini Regine de Banco apud Westm. per Jacobum Dyer Militem Capitelem Justic. ejusdem Curie & Sociis suis Justic. ipsius Domine Regine ibidem de Termino Pasche Anno Regni Domine Elizabethæ nunc Regine Angliæ post Conquestum nono.

**E**lizabetha Dei gratia Angliæ, Franciæ & Hiberniæ, Regina fidei defensor, &c. Custodi Palatii nostri Westm. salutem. Precipimus tibi quod Veni. fac. coram Justic. nostris apud Westm. die Lune prox. ante Festum Sancti Georgii duodecim tam Officiarios in Banco coram Justic. nostris apud Westm. quam de aliis Clericis & Attorn' in eodem Banco existen' ad inquirend' de & super omnimod. falsitatibus rasis contemptibus misprisionibus & aliis Offensis in eodem per quoscunq; perpetrat'. Ac ad ulterius faciend' quod Curia nostra tunc ibidem fore viderit faciend'. Et babeas ibi nomina prædictorum Officiariorum Clericorum & Attorn' & hoc breve. Teste J. Dyer apud Westm. duodecimo die Februarii Anno Regni nostri nono.

Whetley.

Christoph. Hole, } { Geo. Harrison, }  
Willielmus Read, } { Will. Brand, } Jur'  
Tho. Foster, } { Job. Jackson, }  
Rolandus Durant, } { Will. Rudd. }

Thomas Cobb, } { Job. Franklyn, }  
Will. Badger, } { Job. Walmer, } Jur'  
Will. Forrest, } { Will. Drewe, }  
Thomas Freeman, } { Job. Ford. }

The Lord Chief Justice his Charge to the Inquest.

**Y**OU Officers, Clerks and Attornyes summoned to be of this Inquest, Forso much as it is very expedient and necessary sometime to have an Eye to our Officers and Ministers;

and to look upon this our Court for the Maintenance and preservation of the good order, course and antient Customes of the same; And for that I find divers and sundry Records left unto us by our Ancestors that leadeth us unto the same; And because as *Chawcer* very well saith in his Treatise de *Melibeia* & *Prudentia*, That the Judge that seeth faults and winking at them, doth not correct ne punish the same, doth as it were by his sufferance provoke and stirre such Malefactors to be faulty again, and to continue in their former evil docings: Therefore it was thought good now at this time by me and my Brethren to call you together.

And albeit since the time I have sit here you have not had the like Inquest; yet you have not failed at divers and sundry times (as occasion served) of divers Monitions and Adhortations which tended to the same end, and served for the same purpose.

And amongst all other Courts and places of Justice within this Realm, this Court hath been ever revered and had in great Estimation, and hath belonging unto it more Officers then any other Court hath; And therefore many times most faults, errors and negligences are found in it; for where the greater number is, there ever for the most part are the most faults and misdoings (such is our frailnes) what should be the very and true cause of it I cannot tell, except it be as *Terrence* saith, *Mala mens, malus animus*, which as two Spirits and Furies of Hell, the common stirrers up of all vice and naughtines, provoke and pricke men forwards to do all evil; or whether it be this greedy and inordinate desire to be suddenly enriched, that men cannot abide and tarry time and space, but in all post hast must be rich, and have abundance by and by; This posting and hasting, and running after Riches, this great thirst and covetousness is reprovèd and condemned as most detestable of the verie Gentills, and Heathen Poets.

For it is called of them, *Amor sceleratus habendi*, the which for the wickednes that is in it, is called, *The wicked desire of growing rich*; be the riches gotten by hoocke or crooke they care not how, *Per fas aut nefas*.

Another speaketh unto Riches, and saith, *Quid non mortalia pectora cogis auri sacra fames?* Thou wicked desire and hunger of gold to what drawest thou not men, and what compellest thou not man to do? And *St. Paul* saith that it is the very root and spring of all Evil, *Cupiditas* (saith he) *est radix omnium malorum*; For as all things do spring and are nourished from their roots, so where this wicked root is laid and hid, from thence springeth most wicked fruit, and all manner of Evil.

This Writ that you shall enquire upon maketh mention but of four Points in speciall, in generaltie of more; The first of them is, that

you

(a) See Easter 23 Eliz.

you shall inquire *de omnibus falsitatibus*; the second *de rasuris*; the third *de contemptibus*, and the fourth *de Misprisionibus*. You that shall inquire of them, some of you are *Officarii*, some *Clerici* that write in Offices, and most of you Attorneys.

You are the persons allowed by the Law to inquire of these things, you best can for your Vocations and Knowledge, and according to the form of the antient Records you are now appointed to the same; I doubt not but that you will consider your duties herein, remembering how good and honest a thing it is for you and us all that are Members and parties of this Place, how necessary and profitable for all Suitors to have this our Court purged and kept cleane from all such corruption, false and subtle dealings, Errors, negligences, &c. soe you shall serve very well the Common Weale, and our Prince, and above all please God.

I will not charge you with all such faults as have been done long since; for we have had the Queens General Pardon that hath pardoned all Contempts, Disceipts, Negligences, &c. But onely with such Faults as have been done since the Pardon, that is, the six and twentieth day of September or three days before Michaelmas last: And somewhat to open unto you the Points;

1. You shall understand that *Falsitas* as I take it, is where a man outwardly will set a shew, a face and countenance that he doth well, and truly knowing inwardly and to himself that it is not so, but meere subtlety and falshood: As for Example, if he will sue forth of purpose false process, or wittingly of himselfe will Minister a false and forreign Plea, not takeing it of his Clyent. There is nothing more contrary to Justice then is Falshood and Deceit.

2. The second Point is *de Rasuris*, and of Rasures you shall understand that there are two kinds, the one kind lawful and tolerable, as when the Clerks before the Rolls be put in, will for the amending and makeing perfect of the pleadings rase the Roll, or for putting out of blots; and these Rasures are somewhat to be born with, for that many of the young Clerks are not so perfect, but that sometimes in their writings they shall misse and faile; I was sometime a Clerke my selfe, and therefore I do know the experience of it.

Another kind of Rasures there are noxious and hurtful, as to rase and alter the Rolls after they be put in and filed in the chiefest and most principal parts, by the which they change and pervert them quite, and cause them to carry another or contrary sence, and to subvert the whole matter, and to chop and change in new Writs, and new Rolls when the old are lost; which if it be told us, then we may licence them to put in new, but they may not of themselves.

A Record is a Witnes of the truth, and of the time of much longer continuance then any man is, and therefore they have been ever most charely and warily kept and looked unto; they give light and warily kept and looked give light unto posterity, tell them of things done long before; And in doubts and controversies instruct them with the truth; The law termeth them *Tresauri*, that is to say Treasures or Jewells, and calleth the place where they are kept, *The Treasury*, that is to say, the house of Treasure; such is their worthines, their dignity: And therefore every man ought to take heed how he useth them, after what sort he dealeth with them; they are true and just, and may not be touched and defiled with false and unjust hands. This thing was very well considered in Henry the Sixths time, who enacted in the (a) eighth year of his Reigne, That to alter, rase, imbecell any writ, Record, &c. after that it was filed and put in, should be Felony, and inquirable in this Court.

3. Your third point is *De contemptibus*, that is, of such as contemne and breake our Orders and Rules, and will not obey the Orders of this Court; Within this are not only Officers, Clerks, and Attorneys contained, but also any other Stranger that contemneth the same; As wee read of a contempt done to this Court in the two and twentieth yeare of the Reigne of King Henry the Sixth, Where a Squier belonging unto the Kings Court did beat here at Westminster an Attorney for being against him, and erreth in his Clyents cause, he was indited here in this Place for it, found guilty, and paid forty pounds for a Fine.

4. Your fourth point is *Misprision*, and you shall understand that *Misprision* is where a man knoweth Treason or Felony to be done, and yet doth conceale it, and keep it close; For men are not only bound by the Law to doe noe such thing themselves, but alsoe bring them to light and disclose them in others, and so to further their punishments. There are divers kinds of *Misprisions*, some of Treason, some of Felony, some for uttering of false Colne, if he knows it to be false.

And another kind of *Misprision* there is, where a man drew his dagger at a Judge sitting in Seate of Judgement, for the which he forfeited all his goods and lands and had his right hand cut off. These *Misprisions* are punished by discretion and Fine, and never by death.

The *Misprision* you shall inquire of is *Misprision Clerici*, and much of the nature of that *Misprision* that we read in 2 R. II. was found by a Justice of Peace, who among the Indirements that were indorsed *ville vere*, had foist in one Inditement that was not indorsed *villa vera*, he lost his place of Justice of Peace, and paid Fine.

Soe to put in writs not sealed, and by that meanes to beguile the Queene; Albeit this

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alsoe

(a) Cap. 12. and 8 R. 2. cap. 4.

alsoe may be put under the first Member, that is falsehood. Also if any leave out or change the Addition or names of the Partys to cause Error, &c. or put in or leave out whatsoever pleaseth them. Alsoe the statute of *Westminster* (a) the first maketh mention of Pleders, and how they are inquirable of.

The cause of these faults and errors many of them doe arise by reason that the Clerks doe not diligently examine their writings and Rolls; they will take money, but they will not take paines to looke backe to that they have done, that it may come well and truly out of their hands.

And when Error is found here in this Court, it is a great greife to us that sit here to have things not done truly sincerely and as they ought to be done, to see our Acts, determinations and Judgements adnihilated and brought to nought, our Court slandered and evill spoken of, our cares and labours made void and frustrate by the onely negligence of Clerks and Ministers, and the poore man and Clyent that hath suffered this harme and losse, he getteth him home with a heavy heart by weeping Crosse, and cryeth *oleum et operam perdidit*, I have lost my labour, my money, my cause, all is lost, what shall I now doe; Then he beginneth to thinke evill of us that are Judges, and to suspect our Skill, then he curseth his Councellor and Attorney, and speaketh evil of the Law, which of it selfe is most just: In which cases we cannot, nor may not of very right and Justice but cause such negligent Attorneys to restore unto their Clyents their Costs and Charges. Of these and other-like negligences generally; And of such as be late and slack comers to the Term by reason whereof their Clyents matters goe not forwards, you shall further inquire, and wee shall deprive such of their Attorneyship. I will appoint you noe time certain, but that you may doe it at your leisures in time convenient between this and *Michaelmas* Term; if you will have such as shall give Evidence to be sworne, we shall find the meanes they shall be sworne: And this is all I have to say to you at this time.

Mich. 15 Eliz. 1573.

*Orders convenient and necessary for Reformation of certain Abuses and Defects in Officers and Ministers attendants, and belonging to the Court of the Common Place, set down by the Justices of that Place.*

Termino Sancti Michaelis, Anno decimo quinto Regni Regine Elizabethæ.

(a) Stat. 3 Ed. I. cap. 29.

(b) E. 12 Ja. I. Mich. 1654. Sec. 1.

#### Attorneys.

1. *First*, That every Attorney of this Court shall give his attendance at the Court by the second Retorn of every Terme, saving only *Michaelmas* Terme, and that Terme by the third Retorne at furthest, upon pain to forfeit to the Box for every such offence 3 s. 4 d. unless he shall have a reasonable Excuse well proved. (b)

2. *Item*, That no Attorney of this Court shall give, let to rent, or lend his name to any person or persons thereby to practise as an Attorney, nor shall willingly, wittingly or fraudulently permit, and suffer any person or persons to use his name for any Appearance or otherwise, Except in common Recoveries, upon pain to forfeit for the first offence xx s. and for the second such Attorney and Practizer to be expulsed the Court.

3. *Item*, No Attorney shall sue any proceffe, in any real Action or *Recordare*, nor any Clerk shall make any proceffe, unless the Original Writs thereof be first taken out in the Remembrance of the Philizer of the same where the Action shall be commenced: And the same Philizer or his Clerk only to make the proceffe thereof, upon pain for every such Attorney or Clerk to pay such Fine as the Court shall Award.

#### Sheriffs Deputies.

4. *Item*, That according to the ancient Custome of this Court, no person shall be admitted as a Deputy of Record unto any Sheriff, unless he be an Officer or Attorney of this Court; And that one of the Deputies of Record of every Sheriff shall be resident or co-verfaunt within his Sheriffrick, except *London*, *Middlesex*, and other Cities and Towns that be Counties, *Wales*, and the County Palatines of *Durham*, *Lancaster*, and *Chester*; And that one of the said Deputies shall be Attendant upon this Court by the second Retorn of every Term at the furthest: And so to continue to the end of the Term, upon pain as is last abovesaid, all reasonable excuses of absence to be allowed.

5. *Item*, That no person or persons shall return any Writ of Entry in the *Pest* for a Common Recovery to be had, or Writ of Covenant for a Fine to be Levied, or any other proceffe for the which, Fees do belong to the Under-Sheriff, or the Sheriff's Deputies, unless they pay the old accustomed fee for the same, and the same Writ to be assigned by the Under-Sheriff or one of the Deputies as is aforesaid, upon pain to forfeit for every such default, x s.

6. *Item*, That every Attorney, Clerk or other person that shall sue forth any Recovery, and use any Attornyes name in the same, shall pay to the same Attorney whose name shall be used, the accustomed fee, or otherwise satisfie the



the same, upon pain to pay for every such default as is abovesaid, vi s. viii d.

*Sheriffs.*

7. *Item*, That all Sheriffs, Under-Sheriffs, or Sheriffs Deputies, shall retorne all Writs and Common processe that shall be delivered to their hands, or of Record, and deliver them or send them returned into this Court within eight dayes next after they be retornable, upon pain of every such Sheriff or Under-Sheriff that shall offend, to pay as abovesaid, xl s. at the least. (a)

*Suits.*

8. *Item*, That no Officer or Clerk of this Court shall either receive, make or deliver any manner of Writ, Processe, Record of *Nisi Prius*, or Warrant of Attorney, of, to, or for any person or persons to enter any matter or matters, unless the party himself his Attorney or his Attornyes Clerk well known, or some other Attorney for him or in his name, do Orderly deliver or procure and sue forth the same, upon pain to every Officer or Clerk for every such default to pay as is abovesaid, xl s. (b) And that no Attorney, Attornyes Clerk, no Officer or any other Clerk of this Court, shall sue forth or procure by any means directly or indirectly any *Latitat*, or shall solicit, prosecute or follow for the Plaintiff, or plead to any Action, Bill or Suit upon any such processe of *Latitat* in any other Court then in this Court, upon pain to forfeit for his first Offence xl s. and for the second *ipso facto* to be expelled the Court. (c)

Provided alwayes, That the Lord Chief Justice of this Court, and every Justice of Assize having a Circuit, may appoint such and so many of his and their Clerks to sue forth Fines and Recoveries of their own drawing as to them shall seem meet and convenient, so that the Fees of the Retorns thereof be duly paid or satisfied to the Sheriffs Deputies accordingly.

*Prothonotaries Clerks.*

9. *Item*, That no Prothonotaries Clerk being an Attorney shall draw up any Paper or Book of the Office where he is a Clerk, wherein shall be any special pleading, and in which matter the same Clerk shall be Attorney with the Plaintiff or Defendant, Demaundant or Tenant, without the assent of the other party or his Attorney, upon pain to forfeit as is abovesaid for every default, xls.

*Attorneys.*

10. *Item*, For Reformation of the Excessive and unprofitable number of Attorneys of this Court, It is Ordered, That all such Attorneys as have been absent, and not given their due Attendance here according to their Oath, or

that have not been towards any cause or matter in this Court for the space of two years last past, shall be put out of the Rolle. And the like Order to be kept hereafter. (d)

*Sheriffs Fees.*

11. *Item*, That no Sherriffe, Under-Sheriff or Secondary, shall take for the allowance of any *Superfedeas* upon any *Capias* or *Exigent* above xii d. upon pain to forfeit for every such default x s.

*Officers Fees.*

12. *Item*, That no Officer or Clerk of this Court shall take for any Entries, Processe or Search, above the old accustomed Fees, but of the Benevolence of the Party his Attorney or Deputy, upon pain for every such default as is abovesaid Ten shillings.

13. *Item*, That no Officer of this Court shall take or receive of any Attorney of this Court for any Processe, Search, or entry of any proces, plea or matter, commenced or prosecuted in his or their own name or names, any manner of Fees, but as of old time hath been accustomed, unless the Court for some speciall cause otherwise Order it.

*Attorneys.*

14. *Item*, That no Attorney shall be Admitted or put in to be Attorney in the Record of *Nisi Prius*, but such as are Attorneys in the said Suit by the principal Record thereof; And that no Attorney of this Court shall appear as Attorney for the Plaintiff at any *Nisi Prius* but out of this Court only.

*Venue.*

15. *Item*, That no Attorney here, prosecute or sue any forein processe by Original or other proces in any personal Action, other then Actions of Debt only, but in the proper Shire where the cause of Suit shall grow and arise without Licence of this Court, upon pain of forfeiture for his first Offence forty shillings, and disability and expulsion for his second Offence. (e)

James Dyer,  
Roger Manwood.

Mich. 15 & 16 Eliz. 1573.

*Writs, Proses and Entries to be made by the Philazers of this Court only.*

*De Termino Sancti Michaelis Anno Regni Regine Elizabethę decimo quinto & decimo sexto in Communi Banco.*

First, All manner of *Capias*, *Alias* and *Pluries*, and all other incident proces before appearance of the Defendant in all Actions wherein proces of Outlarie do ly.

*Item,*

(a) Hil. 8 Geo. I (b) Mi. 6<sup>th</sup> 7 El. (c) Hil. 8 Car. I. Stat. 13. (d) T. 24 El. Stat. 9. (e) Mich. 1654. Stat. 8.

*Item*, All grand *Cape's*, *Pones* and *Distringas*, as well peremptory as infinite grounded upon any Original.

*Item*, All Writs of *Superfedeas* upon any *Capias* awarded out of their own Offices.

*Item*, All Writs of *Retorn' habendum* upon Nonfuits before appearance, Writs of second deliverance before appearance and Declaration, Writs of *Capias* in *Witbernarn*, *Alias* and *Pluries*. (a)

*Such Entries and Proses as Philazers as well as Prothonotaries may make.*

**F**irst, the Views in Pleas reall, and Writs upon the same.

*Item*, Imparlance upon plain and common Declarations in Plees personal or mixt, and also the General Issues *ad Patriam* in such Actions, and all *Venire faciases* upon such general Issues.

*Item*, In Debt *Non est factum*, General or Special, so as it needeth not a Serjeant's Counsel, *per minas*, *per duritiam imprisonamenti*, *Deins age*, *Ricus per discent*, Release or acquittance of the Plaintiff, whereunto *Non est factum* is pleaded, condition performed, so as it doth not require a Serjeants Counsel, *Plene administravit*, *Ne Unques Executor*. (b)

*Item*, In Treipsals *Non culpabilis* general and *Non culpabilis ad Novel assignement*, *son Frank-Tenement et insult. querent. propriis*, and in Actions upon the Case the general Issue, and all *Venire faciases* upon such Issue, and to deliver them of Record if the party pray it, and continuance upon the Plea Roll until the *Habeas Corpora* awarded.

*Item*, The Fee of every Four-penny Writ to be increased and made Six pence, so that the Original Writ with the Retorn thereof be duly taken out in the Remembrance, and otherwise not.

James Dyer,  
Richards,  
Roger Manwood.

### Easter, 23 Eliz.

(c) *Additio de Termino Pasche Anno Regni dñe domine Regine nunc vicesimo tertio, 1581.*

*Error.*

**I**t is ordered by the Justices of this Court for the avoiding of deleyes of Execution that the Clerk of the Treasury for the Time being shall not make any *Superfedeas* upon any writ of Error to reverse or affirme any Judgment given in this Court upon any ver-

dict, demurrer in law or confession untill some manifest or pregnant Error therein be notified by the Party or some of his Counsel that sueth the Writ of Error, unto the Justices of the Bench, or to one of them at the least. (d)

James Dyer,  
Francis Wyndham,  
Thomas Alcades.

### Trin. 24 Eliz. 1582.

*Orders convenient and necessary set down by the Justices of the Common Pleas, the 22d. of June, Termino Sancte Trinitatis, Anno vicesimo quarto Regine Elizabethæ.*

*Bail.*

**F**irst of all, Actions personal, where the debt and damages amounteth to Twenty pounds or above, the Defendant upon any *Capias* returned against him *Cepi corpus* or *Reddidit se* making appearance in proper person shall put in good Bayle, that if he be condemned, to answer the Condemnation, or to yield his Body to Prison, or the Sureties to pay it for him, (e) and the Bayl to be taken in such Office from whence the Proces upon which the Defendant so appearing did issue, and in none other; and for the same bayle the Defendant to pay the auncient Fee two shillings four pence; (that is to say) for the Fee of the Justices of the said Court for examination of the sufficiency of the said Bayl, two and twenty pence; and for the Fee of the Officer taking and entering the said Bayle, six pence; and that in all other Actions personal where the debt or damages doth not amount to Twenty pounds, the Defendant to be admitted to Common Bayle to be taken and entred only by the Officer from whence the Proces upon which the Defendant shall so appear did issue, and by none other, for the Fee of four pence only to be paid for taking and entering of the same common Bayle.

And that no Attorney shall sue forth any *Superfedeas* upon any *Capias* to be awarded out of this Court after the said *Capias* is delivered to the Attorney of the Plaintiff, unless such Attorney that will sue forth any such *Superfedeas* do cause Bayl to be first put in for the Defendant to answer and satisfie the Plaintiff as aforesaid.

*Philazers.*

And that also the Philazers shall and may enter in their Offices the Declarations and Imparlances of all such matters for which Bayle shall be taken as is aforesaid, if the Plaintiff or other Attorneys willingly without compulsion will have them entred with them. (f)

2. *Item,*

(a) *Mi. 14 Ja. I.* (b) *Trin. 24 Eliz.* (c) Note, This Rule is inserted in the Margent of the Rule *Mich. 6 & 7 Eliz.* (d) *Mich. 6 & 7 Eliz.* *Trin. 24 Eliz. Sect. 4.* (e) *5 W. & M. 1692.* (f) *But see Mich. 14 Ja. I. reg. 2.*

2. *Item*, The said Philazers shall not enter any manner of Judgment in their Offices the Judgment in Replevin before appearance whereupon a *retorno habend.* is to be awarded, and likewise the Judgment in dower and Formadons by default before appearance whereupon the writ of seisin are likewise to be awarded only excepted; ne call upon any Imparlance, nor give any Rules in their Offices for answers, nor shall enter any issues with them but only these following, *videlicet*, *Non est factum*, *nil debet per Patriam*, and *non culpabilis* generall in trespass, and *non culpabilis ad novel assignment*, any former order heretofore in any wise notwithstanding. And the Prothonotaries shall enter the comparence upon *Cepi corpus*, and *Redidit se*, as in times past they have accustomed to doe.

*Writs of Privilege.*

3. *Item*, That no writ of Privilege be granted out of the same Court neither in Terme nor out of the Terme, without some one of the Justices hand thereunto, for the fee of four pence and noe more to the Justices for every such writ.

*Outlawry. Error.*

4. *Item*, If any person (which from henceforth shall be outlawed in any action personal before appearance and Judgment) doe pursue any writt of Error thereupon, the same writt of Error shall not be allowed, nor any Record removed, nor any writ *de non molestando* or *Supersedeas* granted before some manifest Error be shewed to the Court if it be in the Terme time; and if it be in the time of Vacation, then to some of the Justices, and by them allowed. (a)

*Fines and Recoveries.*

5. *Item*, None but Attorneys of this Court or Justices Clerks shall sue forth any Fines or Recoveries, upon payne of forty shillings fine, and to be committed to the Fleet. (b)

And that no Officer of this Court shall suffer any such to deale in any such cause in any of the said Offices, upon such payne, and likewise to forfeit forty shillings.

*Attorneys.*

6. *Item*, That noe Attorney of this Court shall suffer or assent to any other being noe Attorney of the sayd Court to practice in his name, upon payne to be forejudged the Court, and committed as is aforesayd, and the party practising in the Name of any such Attorney contrary to this Order, to be committed and pay forty shillings for a Fyne for every such offence, and that noe Clerke of any Prothonotary other then such as have exercised the roome and place of a Clerke by the space

of seven years last past shall occupie or use the Roome and Office of an Attorney in this Court, and that no Clerk or servant of an Attorney shall write in any Office of Prothonotary, upon the like payn and punishment aforesaid.

7. *Item*, That no Attorney be from henceforth made but once in the year in *Michaelmas* Term upon a meeting of the Justices for that purpose; and the first meeting for that purpose to be at *Michaelmas* Term come twelve Month, and not before.

*Bail.*

8. *Item*, That no Attorney of this Court shall be bayle for any man upon proces awarded out of this Court, upon payn of being forejudged the Court. (c)

*Attorneys.*

9. *Item*, That if any Attorney of this Court shall absent himself two Terms together from the said Court, except it be by occasion of sickness or otherlike Urgent cause to be allowed of by the Court, then he to be forejudged the Court, and to be no longer an Attorney thereof. (d)

*Officers.*

10. *Item*, That no Officer of the Common Place shall suffer any men to put any Attorneys name to his Remembrances, except he be the Attorney himself, or his Clerk well known.

*Seal Office.*

11. *Item*, Whereas before this time divers of the Attorneys of this Court have used immediately after the end of every Terme to depart and leave the suing out of their Meane proces, *videlicet*, *Capias*, alias *Capias*, and *Pluries Capias* to other persons, who not being sworn for their true dealing, have many times delivered proces to the Custos brevium, Philazers and Exigenter of this Court and their Clerks unsealed, although sometimes giving a colour thereof, to the defrauding of the Queens Majesty of her duty arising by her Majesties Seale of this Court, Wherefore, It is Ordered by the Justices of this Court, That the Custos brevium, his Deputy or Clerk, or any of them from henceforth shall not receive any proces of any Exigenter Philazer, Attorney or their Clerk, or any of them except the same proces be at such delivery thereof apparently sealed with the Queens Majesties seale of the said Court; And further, That any Philazer or Exigenter of this Court, or any of them, or the Clerkes of any of them, shall not from henceforth take any proces of any person or persons to the intent to take out the same proces in their remembrances or to File the same with the Custos brevium unless the same proces be delivered unto them apparently sealed, upon such pain and penalty as shall be inflicted upon

D

upon

(a) East. 23 Eliz. Trin. 28 Ca. II. Mi. 6 Geo. II. reg. 6. (b) See Easter 43 Eliz. (c) Mich. 1654. Sed. 1. Mi. 6 Geo. II. reg. 5. (d) Mich. 15 Eliz. Sed. 11.

upon every offendor herein by the Justices of this Court. (a)

*Writs of Error and Certiorari.*

12. Item, That all writs of Error and of Certiorari directed to the Chief Justices of the Common-Pleas for the time being, shall be first delivered to him before they be broken, or else no Record forth of this Court shall be removed or certified.

Easter, 43 Eliz. 1601.

An Order made the second day of May this present Term of Easter, in the Three and fortieth year of the Reign of the Queens Majesty that now is.

Concerning Writs of Dedimus Potestatem.

*W* Heras by the antient usage grounded upon the Lawes and Statutes of this Realm, there was in every Writ of Dedimus Potestatem to take the knowledge of any Fine, a Knight or a Serjant at the Law named and meant to be of the Quorum, unless the knowledge were taken by some of the Justices at Westminster, or of the Barons of the Exchequer being of the Coyse; which antient usage was duly observed until about thirty years last past, since which time such Dedimus Potestatem have been commonly directed to persons of mean calling; and although a Knight were named therein, yet it was but pro forma tantum, and he never sealed unto it, but the knowledge taken by the rest being for the most part men of mean calling, and commonly unlearned, and unskilful in such causes, by reason whereof the great and reverent solemnity which ought to have been inviolably observed in Fines is neglected. The said Fines levied with Proclamations being the highest Barrs and Records of greatest power and force, binding as well privies as strangers, unless they make their claym in due time; And yet the said Fines by such means are abused, and knowledge of Infants and Women Coverts not duly examined, Idiots and such like other persons have been taken and certified by such Commissioners: And so it was this present Term of Easter, in the Three and fortieth year of her Majesties Reign, provided in open Court by oath in a Fine taken by such Commissioners in the County of Lincoln; and divers of the like sort have been certified, as it was this day also testified by the Clerk of the Fines; which abuses and disorders are very common and great, and meet in Justice to be reformed.

Therefore to prevent such great inconveniencies, and to the intent that Fines may be taken by men of credit and reputation according to the Law and Customs of this Realm;

It is this day Ordered, That from and after the second Return of Trinity Term next ensuing, no Dedimus Potestatem directed to Commissioners to take the knowledge of any Fine, shall be received or recovered in this Court, unless the same knowledge be taken by some of the Justices of the one Bench or the other, or of the said Barons of the Exchequer, or Serjeant at Law, or that a Knight be of the Quorum. (b)

Fines.

2. And because many Errors, faults and abuses have been and daily are committed in suing out of Fines, by reason that many unskilfull persons and such as were never brought up in this Court nor belonging to the same, do take upon them to sue out Fines; And that if any such abuses, faults or Misdemeanors doe happen touching the same through their Negligence or default, no reformation or punishment can be had they being persons unknown.

It is therefore further Ordered, That no Fine or Dedimus Potestatem shall be received or recovered in this Court, unless the same be sued out by some of the Attorneys of this Court, or Clerk of some of the Justices of Assize, and subscribed with the name of such said Attorney or Clerk, to the intent if any Misdemeanour be committed, they may be called to answer it. (c)

E. Anderson,  
Tho. Walmsley,  
Peter Warburton.

Orders of Court.

—, 2 Ja. I.

Orders set down to be observed in this Court, Touching pursuits upon Penal Lawes.

1. *F*irst, That Special care be taken that no Proces be suffered to be sued forth upon any Information against any penal and popular Statute, before the Information exhibited, according to the Statute of Anno xviii. (d) of the late Queen; And that the said Information be set on the file.

2. Item, That the Information once set on the file, be not after taken thence.

3. Item,

(a) Mich. 1654. Stat. 6. (b) Rules relating to Fines, Hil. 14 Ja. I. Hil. 28 & 29 Car. II. East. 29 Ca. II. East. 6 W. III. Easter 9 Anne. (c) Trin. 24 Eliz. Stat. 5. (d) Cap. 5. Stat. 29 & 31 Eliz. cap. 5.

3. *Item*, That the very day of the exhibiting the Information, be set on the back-side of the Information; And that the Informer exhibit the same according to the said Statute; And that the Informer's Name, and the Statute on which the Information is grounded, be indorsed on the back-side of the Process.

4. *Item*, That the Informer pursue his Suit without any unnecessary delay, or any practice to defraud the due execution of the Statute upon which he Informeth: And if any do offend in any thing contrary to the Statute of xviii. or xxxi. of the late Queen Elizabeth concerning Informers, That in every such case the offender be punished according to the true meaning of these several Statutes.

5. *Item*, That no Licence to compound upon any penal Statute shall be given, nor Composition made but in open Court, and both the Informer and Defendant to be present; And that not to be done but that the Informer shall set down upon his Oath what he will take; And that he hath not taken, nor will take any more.

6. *Item*, That at the end of every Term some honest and discreet Clerk for that purpose to be assigned by the Court, shall see and make Report to the Court what Informations or Suits upon Penal Lawes be depending, and how they are prosecuted, and whether any default or fraud be in any Informer in prosecuting his Information, whereby the Court may take order for his punishment in that behalf according to the Law. \*

- (a) *Edm. Anderson,*
- (b) *Peter Warburton,*
- (c) *Will. Daniel.*

—, 6 Ja. I.

*An Order concerning the bringing in of Rolls.*

THIS Rule being further enforced by a Rule made Easter the 5th. W. & M. reg. 2. it is here omitted, and the Reader thereto referred.

Easter, 11 Ja. I. 1613.

*De Termino Pasche Anno Regni Domini Jacobi nunc Regis Anglie, &c. undecimo et Scotie quadragesimo quinto.*

Entering Judgments.

*Whereas of ancient time no Judgments of this Court either by Non sum informatus, or Nichil dicit could be entred of Record in this Court, without the Notice and Commandment of the Judges of this Court, nor any Costs of Suit given upon any of the said Judgments before the Costs were taxed and allowed of by some of the Judges of this Court; which useage continued a long time, until it pleased this Court to depure and appoint the Prothonotaries of this Court to take order for the entering of all such Judgments, before such Judgments were entred of Record: Sithence which time Attorneys of this Court being also Clerks in the Prothonotaries Offices, have entred many of the said Judgements without the Warrant of any of the Prothonotaries or Judges, and have also entred great and excessive Costs upon the said Judgments at their pleasures, which were never rated or taxed by the said Prothonotaries, nor any Judge of this Court, to the great wrong of many of his Majesties Subjects, as hath appeared by many Complaints: For Reformation of which Abuses,*

*It is Ordered, This present Term of Easter, That no Clerk or Attorney of this Court, shall from henceforth enter of Record in this Court any of the said Judgments, or set down upon any of the said Judgments so entred any Costs of Suit, before the said Costs be rated and allowed of by any one of the Judges of this Court, or by the Prothonotary of this Court, in whose Office the same Judgement shall be entred of Record, and Warrant given by him under his hand for the entering of the said Judgment, upon pain to be imprisoned and expelled the Court for ever.*

*E. Coke, } H. Winch,  
P. Warburton, } } August. Nicolls.*

Easter,

\* *Mi. 12 Ja. I. Hil. 20 Ja. I. (a) Was made Lord Chief Justice of the Common Pleas 11 April 1603. 1 Ja. I. (b) Made a Judge of the Common Pleas 24 Nov. 1601. (c) Made 3 Feb. 1603. Fra. Gawdy Chief Justice of Common Pleas 26 August 1605. 3 Ja. I. (d) Mich. 6 Geo. II. reg. 4.*

Easter, 12 Ja. I. 1614.

*De Termino Pasche Anno Regni Domini Jacobi nunc Regis Anglie, &c. duodecimo.*

Prothonotaries Clerks.

**F**Orasmuch as many Disorders of late have crept into this Court, by reason that the Prothonotaries of this Court do admit so many to be Clerks of their Offices as were never brought up in their Offices, and such as are ignorant of the Orders and Course of this Court, whereby great disorders do daily arise in this Court, and amongst others, the ill entering of Rolls, and the keeping out of them so long that the Rolls cannot be bound up in such convenient time as they should and have been accustomed; and this proceedeth that the Prothonotaries Clerks do carry their Rolls into the Country, for remedy whereof,

1. It is Ordered, this present Term of Easter, That if any Clerk of this Court shall presume to carry any Roll of this Court into the Country, he shall for the first Offence forfeit to the Poor mans Box of this Court Forty Shillings; and for the second committed to the Fleet, and expelled this Court for ever.

Rolls.

2. Item, That every Clerk of this Court entering of any one Term half a File of Rolls and under, shall within fourteen dayes next after the end of every Term deliver into the Office whence he received such Rolls, all the said Rolls well and faire entred, upon pain to forfeit to the Poor mans Box of this Court for every one of the said Rolls not delivered as aforesaid for the first offence ten shillings, and for the second to be expelled this Court: And that every Clerk of this Court that entreth of any one Term above half a File of Rolls, and under a File, shall within one and twenty dayes next after the end of every Term (Easter Term only excepted) deliver as aforesaid all his said Rolls well and fair entred, upon pain to forfeit as is last above said. And moreover, That every Clerk of this Court that entreth of any Term one File of Rolls and upwards, shall within thirty dayes next after the ending of every Term (Easter Term only excepted) deliver as aforesaid all his said Rolls well and fair entred, upon the like pain to forfeit to the Poor mans Box of this Court for every one of the said Rolls not delivered as aforesaid for the first offence Ten shillings, and for the second offence to be expelled this Court. (a)

I

*Writs of Execution.*

3. Item, That no Clerk or Attorney of this Court shall make or sue out of this Court any Writ of Execution upon any Judgment of this Court, except it be first signed with the hand of the Prothonotary of this Court in whose Office such Judgment shall be entred, upon pain to forfeit to the Poor mans Box for the first offence Twenty shillings, and for the second Offence to be committed to Prison, and to be expelled this Court for ever.

*Attorneys.*

4. Item, That every Attorney of this Court shall give his Attendance at the Court by the second Return in every Term, saving only in Michaelmas Term, and in that Term, by the third Return at the furthest, upon pain to forfeit to the Poor mans Box for the first offence Forty shillings, and for the second offence to be expelled this Court, unless he shall have a just and reasonable excuse allowed of by this Court. (b)

Henry Hobarte,  
Peter Warburton,  
H. Winch,  
Augustine Nicolls.

Mich. 12 Ja. I. 1614.

**O**rders made from henceforth to be observed in the Court of Common Pleas, concerning pursuities of Informations exhibited upon any penal Statute. (c)

*Informers.*

**W**Hereas heretofore many Writs of Subpoena, Labels and Tickets have been unduly made forth of this Court by the Clerks of this Court, no Information being filed in Court with any of the Prothonotaries, to the grievance of the Subjects of the Realm, and Slander of the proceedings of this Court, It is Ordered by the Justices of this Court this present Michaelmas Term, in the Twelfth year of his Majesties Reign, as followeth.

1. First that no proceffe shall be awarded upon any Information exhibited in this Court, untill such time as the said Information be Orderly filed in one of the Prothonotaries Offices of this Court, there to remaine upon the said file, and then the Writ of Subpoena, and all other procefs to be Signed by the Prothonotary, all generall Issues to be marked upon the Information, and if any Clark doe make out any Subpoena, Latell or Ticket contrary to this Order That for the first fault he shall pay unto the Poor mans Box xls. and for the second

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(a) Mich. 1649. Trin. 29 Car. II. reg. 5. (b) Mic. 15 Eliz. Mich. 1654. Sect. 1. (c) Former Rule —, 2 Ja. I.

to be expelled the Court, and the Informer that shall procure any *Subpœna*, Label or Ticket contrary to this Order by their owne means, or by any other not a Clark of the Court, the said Informer to be committed to the *Fleet*, and to make such fine with the King as shall seeme fit to the Court; That no Informer presume to Compound for any penalty conteyned in any such Information, before the Defendant have pleaded to the said Information or Confessed the same.

**Fees.**

2. *And to the Intent that a due moderation be had and kept concerning the fees due for the prosecution of any such Information, It is likewise Ordered,* That the Prothonotaries of this Court shall take for the entring of any Information, and signing of the *Subpœna*, only 2 s. and viii d. and for the signing of any other process xvi d. and likewise that the Clerk Ingrossing the said Information shall receive and take for his payns in that behalfe only viii d. and for the Copy of the said Information if it amount to the number of five leaves of paper and upwards, iii s. iii d.; if it be under the number of five Leaves then for every Lease eight pence: for the making of every *Capias pro fine* vi d. for the seale of every *Subpœna* and *Capias pro fine*, the farmour of the Seale of this Court shall take only i d. for the seale of every other process vii d.

3. And if it happen that any general Issue be pleaded to any Information after the Term wherein the same Information shall be exhibited, That then some known Clerk appointed by the Prothonotaries for that purpose to enter the said general Issues upon the Roll as aforesaid, and he to receive of the defendant for his paynes in that behalfe only viii d.

**Compositions.**

4. Also that no Informer presume directly or indirectly to take any sum of Money or other rewards of any defendant named in any such Information to neglect or foreclose the due prosecution of the said Information, untill he have duly obtained from some of the Justices of this Court under his hand a several Licence to Compound for every several information so by him exhibited.

5. Likewise that after every such Licence so had and obtained, and before any Composition made, the said Informer shall with all convenient speed bring the said Licence into the Prothonotaries Office where the Information is filed, there to be Registred in a book to be kept for that purpose, and the Clerk to have iii d. for Registring thereof.

6. Also that every Informer after a Composition made for his part of the penalty by vertue of any such Licence shall with all convenient speed make true certificate to some

one of the Judges of this Court upon his oath, of all such summes of Money as he hath received or shall receive for his said Composition, which said Certificate together with the said Licence shall be forthwith sent unto the said Prothonotaries Office, there to be Registred in the aforesaid book under Registry of the said Licence to the Intent that the Justices of the said Court being truly informed thereof, may the better know how to rate and proportion the Kings part.

7. And if no such Composition be made by vertue of any such Licence before the next Term following after the granting of the same, yet shall the Informer in the same next Term following certifie the same Licence as is aforesaid; and for default of such Certificate, then an Attachment to be awarded against the same Informer.

8. *And to the intent his majesty may be the better answered and Satisfied of all such summes of money as shall accrew unto him by the said Informations;*

*It is likewise Ordered,* That if the defendant in the same Informations named after Composition made with the Informer as is aforesaid, do not voluntarily come in to answer unto the Kings majesty for his fine to be Taxed and assessed by the Justices of this Court for his Majesties use, then a *Capias ad Satisfaciendum finem* shall be awarded against him to compel him thereunto, whereupon the fine being set and assessed, shall be presently paid in, and satisfaction being thereupon made and entred by the Prothonotary upon the Rolle of the said Information, shall be for ever a full and finall discharge of the said Defendant for the same Offence.

9. Also that every Information shall be entred on the Rolls of the same Term wherein it is exhibited, and that every general Issue pleaded to any Information shall be entred upon the same Roll where the Information is Entred, whether the said Issue be pleaded unto the first Term, or at any time afterwards.

(a)

Henry Hobart,

Peter Warburton,

H. Winch,

Augustine Nicolls.

E

Mich.

Mich. 14 Ja. I. 1616.

I. *A declaration what Writs, Proces and Entries are to be made by the Philazers of this Court only, and by no other.*

*De Termino Sancti Michaelis anno regni domini Jacobi nunc Regis Anglie, &c. quarto decimo et Scotie quinquagesimo.*

**I**mprimis, All manner of *Capias*, *Alias* and *Pluries*, and all other incident proces before appearance of the defendant in all actions wherein proces of outlawrie do lye, untill the Exigent awarded.

*Item*, All *Grand Cape's*, *Pone* and *Distingas* as well *peremptory* as infinite, and all other incident proces before appearance of the Tenant or Defendant, Writs of *Seisin*, and Writs to enquire of damages Issuing before appearance of the Tenant or defendant; but all Judgments upon Writs of Enquiry of damages are to be entred with the Prothonotary only.

*Item*, All writs of *Superfedeas* upon any *Capias* awarded out of their own Offices and writs of *Rescous* upon the Sheriffs return.

*Item*, The entring of all *Comperence* upon Writs Issuing out of their own Offices, the entring of Rolls to compell the Defendant to appear, their bayles upon appearance, and making the first *Scire facias* upon the said Bayle.

*Item*, *View* in dower or any other action where it lyeth, entring thereof, and writs of *View* thereupon.

*Item*, All writs of *Retorn. habend.* upon *Non suite* before appearance, Writs of second deliverance before appearance, Writs of *Capias* in *Wishernam*, *Alias* and *Pluries* likewise before appearance, &c. (a)

Henry Hobarte  
Peter Warburton,  
H. Winch.

Mich. 14 Ja. I. 1616.

*De Termino Sancti Michaelis Anno Regni domini Jacobi Anglie, &c. quarto decimo & Scotie quinquagesimo.*

Writs.

II. **W**hereas by the dayly Complaint made unto this Court it doth plainly appear, that many *Capias*, *Alias* and *Pluries* are sued

out without any Original to warrant the same whereby the King is deceived of his Fines and seales, and the Plaintiffs loose the benefit of their Suits, having most commonly Judgments by default, *Non sum informatus*, or confession; which Judgments are reverfable for want of the Original, and the defendants put to unjust charges when no Original is to warrant their arrest: For remedy of which abuses, forasmuch as other writs, videlicet, *Exigents*, *Habeas Corpora*, and the like, which are alwayes delivered of Record, are by that meanes freed from that abuse;

It is Ordered, That the first *Capias* only upon every Original Issuing out of this Court shall be by the Philazers of this Court entred and delivered of Record, for which entry and delivery of Record the Philazer shall take the antient and usual Fee of four pence; And that no Attorneys upon payn to forfeit five pounds for the first offence, and expulsion for the second, shall presume hereafter to Seale any such first *Capias* before the same be indorsed by the proper Philazer of the County out of which the writ is awarded, or his deputy thereunto appointed: And that all declarations in all suits shall be entred with the Prothonotaries of this Court only and no other. (b)

2. And whereas all appearances for defendants upon writs of *Capias*, *Alias* and *Pluries* issuing out of this Court ought to be entred of Record, or otherwise they are not warranted by the Course of this Court, neither can the defendant if he have been arrested plead thereupon quod comperuit ad diem in discharge of the Sheriffs bond taken for the appearance, upon which they are often sued, and the antient and usual Fee for entring all such appearances of Record being two shillings and four pence;

*Appearances.*

It is Ordered, That every appearance upon every writ of *Capias*, *Alias* and *Pluries* issuing out of this Court, shall be entred of Record by the proper Philazers only out of whose Office the said writ was issuing, and by none of the Prothonotaries or other Officers of this Court: And that no Attorney upon payne to forfeit forty shillings to the Poor mens Box for the first Offence, and expulsion of the Court for the second Offence, shall receive any declaration, or offer his appearance to any Clerk or Attorney of this Court upon any such mean proces before the Attorney for the defendant hath entred the appearance of the Defendant with the Philazer of the said County out of which the writ is awarded, for taking of which appearance, and entring thereof upon Record, the Philazer shall take the Fee of sixteen pence and no more whereof he shall allow four pence to the Attorney which appeareth

(a) Mich. 15 & 16 Eliz. (b) Trin. 24 Eliz.



peareth for the defendant, for bringing a copy of such Writ from the Sheriff.

Henry Hobart,  
Peter Warburton,  
H. Winch.

Hil. 14 Ja. I. 1616.

An Order made the 26th. day of January, in Termino Sancti Hillarii Anno Jacobi Regis Anglie, &c. quarto decimo et Scotie quinquagesimo.

Fines.

I. *Whereas by an Order made Secundo die Maii in Termino Pasche Anno Elizabethæ Regine, &c. xliii. concerning Writs of Dedimus potestatem, It was then Ordered, (inter alia) That because many Errors, faults and abuses, have been and daily are committed in suing out of Fines, by reason that many ignorant and unskilful persons, and such as were never brought up in this Court, nor belonging to the same, did take upon them to sue out fines; And that if any such abuses faults and Misdemeanors did happen touching the same through their Negligence or default, no Reformation or punishment could be had, they being persons unknown, It was then Ordered that no fine should be received or Recorded in this Court unless the same be sued out by some of the Attorneys of this Court, or Clerk, of some of the Justices of Assize, and subscribed with the name of such said Attorney or Clerk, to the intent that if any Misdemeanour be committed they may be called to answer it as by the said Order remaining in the Treasury at Westminster at Large appeareth: Which said Order hath not been performed as it should or ought to have been, to the Loss and hinderance of the Attornyes of this Court and prejudice of the Kings Subjects; And for that the Clerk of the Warrants hath the custody of the Rolle of the Attornyes, and may best know who are Attornyes of this Court and who are not, and may give notice thereof to the Court if this Order be not hereafter duely observed (the want whereof heretofore hath made the said former Order (a) frustrate) for the better Reformation therefore of Abuses,*

*It is this day Ordered, That from henceforth no fine upon any writt of Covenant shall be executed and sued out but by and in the name of an Attorney of Record of this Court, or of a Justices Clerk of his Fines: And the said Attorney or Justice's Clerk (or his man well known) shall bring the writ of Covenant immediately after it shall be sealed to the Clerk*

*of the warrants of this Court, or his Deputy, to be signed by him before it be returned Signed or Recorded by any other Officer of this Court, To the intent that the said Clerk of the warrants or his Deputy may take and keep a note of the said writ of Covenant; which note shall be made in the form following, Berks. ff. A. B. po. lo. suo C. D. ad prosequend. breve de Con. versus E. F. de Maner. de Dale cum pertin. ac de ten. in Sale, &c.*

*2. And because this Order tends to the retaying of the causes of the Court in the hands of the Attornyes of the same as is due, It is Ordered, That the Attorney himself and Justice's Clerk shall allow for every such Entry iiii d. out of his fee or fees, and the Attorney or Justice's Clerk shall subscribe his name to the said note. And the said Clerke of the warrants or his deputy shall thereupon without delay Signe the said writ and keep the same Note, and Register it in a booke, that it may appear to the Court (if need require) what Attorney it was that sued out that fine; And that no Officer of this Court or his Deputy doe Receive or signe any writ of Covenant, or make Entry of any fine until it be signed by the Clerk of the warrants of this Court or his Deputy, upon payne that any Officer, Attorney and Clerk of this Court herein offending, shall pay to the boxe for the Poor for every Offence xx s.*

Henry Hobart,  
Peter Warburton,  
H. Winch.

II. *Orders considered of by the Judges, concerning the Exaction and Excessive taking of Fees.*

*First, It is Ordered, That an exact Examination be had in every Court, and in every Office in that Court, what Fees were antiently taken and due for every thing done in that Court, and what hath been exacted by colour of erecting New Offices, or for post diems, or in respect of expedition, or upon any other pretence or colour whatsoever. The like to be done by the Justices of Assize for Fees belonging to the Clerk of the Assize or of the Peace, Sheriffs or other Officers whatsoever within their Circuits.*

*Then the true and antient Fees known to have them set down in Tables of every Court, and for every Circuit, and there to remain in such places as those Judges of those several Courts and Circuits shall assign and appoint.*

*And if any Officer, Attorney or Clerk shall offend in taking other Fees then shall be allowed of and set down in that Table, then the same Officer, Attorney or Clerk, for the first*

(a) *Easter 43 Eliz. Trin. 24 Eliz.*

first offence to make restitution of treble so much as he shall have taken of the party, and for the second offence to do the like, and to lose his Office and place, and to be excluded the Court for ever.

#### Attorneys.

2. That the number of Attorneys of each Court be viewed, and to have them drawn to a competent Number in each Court, and the superfluous Number to be removed, wherein respect to be had, that the most unfit and unskilfullest persons be removed.

3. That no Attorney shall suffer any other to use his Name, or practice in his Name, upon pain that the one and the other be both punished at the discretion of the Court, and to be excluded the Court for ever. (a)

#### Bail.

4. That no Bayl be offered to be put in by any Attorney for any party against whom no proces is sued, or Original brought, but the party being present, and the assent of the Court thereunto had.

#### Fees.

5. That no Attorney nor Solicitor shall take any allowance of or for any (b) Fee disbursed by him to any Serjeant or Councillor in case where the General Issue is pleaded, or for procuring to have or make an answer without having a Ticket subscribed by the proper hand and Name of the said Serjeant or Councillor testifying what Fee he hath received, and for whom, upon pain to be excluded the Court, and from the practice of an Attorney or Solicitor for ever, And to make restitution to the party so much as he shall so take allowance of; and if any Councillor at Law shall so affirm under his hand, that he hath received more than was delivered to him in truth, that then such Councillor shall be excluded from any further practice in that Court where the cause is depending, at and by the discretion of that Court. And that no Attorney or Solicitor shall take any allowance of or for any Fee disbursed by him to any Serjeant or Counsel in any other case then is before set down, but that he shall truly set down the Councillors Name, what Fee he hath disbursed, and to whom, and take his Oath (if the party doth require it) before some Judge in the Court where the Cause depended, That he truly disbursed the said summe to the same Serjeant or Counsellor, upon pain as is aforesaid.

#### Serjeants and Councillors.

6. That if any Serjeant or Counsellor at Law shall take any Fee to be of Counsel with any and to be with him at any time certain for any cause, and shall not attend the same cause ac-

cordingly, that then upon complaint made, or Information thereof given to the Judges of that Court where the Cause shall be depending, or any of them, the Judges by their discretion shall give order for the repayment and satisfaction thereof to the Client.

7. That if any Serjeant or Counsellor at Law shall be complained of to the Judges of any Court where the cause shall be depending, that the same Serjeant or Counsellor at Law have taken excessive Fees of any, for any matter depending in that Court, that then upon proof thereof the same Serjeant or Counsellor shall at the discretion and appointment of the same Judges make restitution of the excess thereof to the party, upon pain not to be suffered to practice in the same Court for such and so long time as the Judges of the same Court shall think fit, if the Court shall think fit to inflict such punishment on them.

Mich. 17 Ja. I.

De Termino Sancti Michaelis Anno 17  
Jacobi Regis.

#### Fees.

Whereas this Court hath been lately informed of a certain exaction sometimes committed by some Attorneys Clerks and Solicitors, in some remote Parts of this Realm, Namely, that they take Money of their Clients for the Returns of Original Writs, and the subsequent Process thereupon, as Capias, Alias and Pluries, whereas no Fees were ever due, paid or required for the same, nor any Allowance thereof ever made by the Court, or any Officer of the same, so that if any such Fees be taken, they are taken against the Course of the Court without Warrant, and are mere Extortion.

Now to the end that such Exactions, if any there be, may be prevented or stopped in their beginnings, This Court Ordereth, That from henceforth no Officers or Ministers, Attorneys Clerks, Solicitors, or other Person or Persons whatsoever, shall attempt to take, or demand any such Fees of any Person or Persons, for the Return of any such Writs, upon pain of Imprisonment and other Punishment due to Extortion, and if the Offender be any Officer, Attorney or Clerk of this Court, that then he or they shall be also disabled of his or their Practice in this Court.

Henry Hobarte, 2 { H. Winch,  
P. Warburton, 5 { Richard Hutton.

Hillary

Hillary 20 Ja. I. 1622.

*Orders concerning Informers, and other Prosecutors upon Penal Lawes.*

*De Termino Sancti Hillarii Anno vicefimo Regni Jacobi Regis.*

*Whereas it pleased the Kings Most Excellent Majesty, by his Letters Patents under the great Seal of England bearing date the Fifteenth day of October, in the Eighteenth year of his Majesties Reign of England, to erect an Office of Receiver and Collector of Fines and Forfeitures due and to be due upon Penal Lawes, Excepting (amongst other things) such as concern Badgers and Drovers: And whereas also it pleased his Majesty by other his Letters Patents bearing date the Eighth day of January, in the Twentieth year of his Majesties Reign, to unite and annex unto the aforesaid Office the Collection and Receipt of all such Fines and Forfeitures as concern Badgers and Drovers formerly excepted, authorizing and requiring by the said several Letters Patents divers and sundry things to be done and executed for his Majesties better Service as therein is at large expressed;*

*It is ordered, for the better accomplishment of his Majesties good pleasure specified in the said several Letters, as ensueth.*

**F**irst, That every Informer or prosecutor that shall hereafter exhibit or sue in this Court any Action, Suit, Bill, Plaint or Information, upon any Penal Law, shall within three dayes after the exhibiting thereof, deliver unto the said Receivers or Collectors, or their Deputies, at the publique Office kept by them for that purpose, a true Note containing briefly and exactly the effect of the said Information, Action, Suit, Bill, or Plaint, with the names and places of abode of the Defendants, and the quality of their Offence, to the intent the same may be registred according to the true intent of the said Letters Patents; or else shall make known at the said Office the place of the said Defendants abode, and leave at the said Office a true Copy of the said Information or Plaint, to the intent the said Receivers or their Deputies may thereout take such Notes to be Registred as they shall think fit.

2. *Item*, The said Informers and other Prosecutors shall deliver into the said Office unto the said Collectors or their Deputy or Deputies, a true and brief Note of every Verdict, Judgment or Execution that shall be

given or awarded in the said Informations Actions and Suits; and that within three days after such Verdict, Judgment or Execution so given or awarded respectively.

3. *Item*, That every such Informer or other Prosecutor shall within the like space of three dayes as aforesaid, after any Licence given for the making of any Composition or any Fine stricken or assessed for his Majesty, or any composition made, enter the same in this Court, and also deliver a brief and perfect Note under his or their hands, expressing truly what Licence, Fine or Composition hath passed therein, unto the said Collectors and their Deputy or Deputies at the Office aforesaid.

4. *Item*, That every Informer or other Prosecutor that hath heretofore since his Majesties last General Pardon, made any Composition which is not recorded or entred in this Court, shall before the end of *Easter* now next ensuing certifie and enter the same truly and justly in this Court upon the said Informers own oath, and also deliver a brief and perfect Note thereof to the said Collectors or their Deputies in the said Office.

5. *Item*, That every Informer or Prosecutor shall prosecute with effect, without compounding, unless they be Licenced by the Court to compound, and the Licence entred in this Court, and a brief Note of the same delivered to his Majesties Officers as aforesaid; And that all Clerks and Officers be careful to perform their duties for levying his Majesties parts and duties; otherwise upon complaint to be made by the said Collectors, or Receivers or their Deputies, condign punishment shall be inflicted on these Offenders for their Offence or Neglect.

6. Lastly, That the said Collectors and their Deputies, such as shall be allowed by this Court, shall be admitted to have free access unto any Office in this Court, there in the presence of the Principal Clerk of the same Office, or some other by him to be appointed for that purpose to view and see, search and examine all and every the Records, Rolls, Proses, Files and Extreates in the same, or in the Custody of any of the Officers belonging to the same, which may tend for the discovery and better finding out of any frauds or concealments of the Nature aforesaid concerning any Information, Licence, Composition or Judgment upon any Penal Law or Statute; And also to take Notes or copies of all such Informations, Bills, Plaints, Suits, Verdicts, Judgments, Executions, Licences and compositions upon the same, as well for the time past, as the time to come, as they the said Receiver, or their Deputy or Deputies for that purpose appointed shall think fit, without paying any Fee for the same. And that all Officers and

F

Clerks

Clerks of this Court shall yield them their reasonable furtherance and assistance herein.<sup>(a)</sup>

Henry Hobart, } { Edward Hutton,  
H. Winch, } { William Jones.

## Hillary, 2 Car. I. 1626.

*De Termino Sancti Hillarii Anno Regni Domini Caroli Dei gratia Anglie, Scotie, Francie & Hibernie Regis fidei defensoris, &c. secundo.*

Concerning Outlawries, and Writs of Trespass, Quare clausum fregit.

**O**rders made this present Term of Saint Hillary, by the Lord Chief Justice and the other Justices of the Court of Common Pleas at Westminster, for the Reformation of divers Abuses as well concerning Outlawries, as Misdeamors of Sheriffs in the Execution of Process thereupon, to the great delay and damage of Creditors in their Suits, as also by the late suing forth of Writs of Trespass, Quare clausum fregit, where the cause of Action is Debt, contrary to Law and the antient Practice of this Court: And that the said Abuses may be suppressed, and the Proceedings of this Court settled and established for the due Administration of Justice both to the Plaintiff and Defendant according to the Rule of Law, and the Usage of the same Court.

### *Actions of Debt.*

1. It is *Ordered*, That no Attorney or Clerk of this Court hereafter shall sue forth a Writ of Trespass *vi et armis*, where the true cause of Action is debt, upon pain to forfeit for the first offence Twenty shillings; and for the second offence to be put out of the Roll; And that no Attorney or Clerk by consent or composition shall take a declaration in Debt, his Clyent being arrested upon an Action of Trespass *vi et armis*; or shall take a Declaration for any greater debt then for which the Defendant was arrested; but the Defendant to have Costs of Suit in such cases for his unjust vexation, according to Law and the antient Practice of this Court.

### *Outlawry. Bail.*

2. It is *Ordered*, That upon every Reversal of any Outlawry or Writs of Error brought for Reversal of any Outlawry before Judgment,

except in the cases hereafter following, the party that shall so Reverse the Outlawry or bring a Writ of Error for reversing such Outlawry, shall by himself or his Attorney appear to a new Original, and put in *(b)* Bail to the Plaintiffs Suit, if the debt or damages demanded by such Original be Twenty pounds or above, in such manner and form as is used in all cases when any Outlawry is reversed, or a Writ of Error for want of or for insufficiency of the Writ, or return of the Proclamation, according to the Statute made in the 31<sup>st</sup> year of *(c)* Queen Elizabeth; unless the Plaintiff himself or his Attorney give consent therunto, or that the Court be satisfied by sufficient testimony upon Oath or otherwise, that the matter is agreed.

3. But in case where the Defendant is arrested upon a Capias Utlegatum in some remote County one hundred miles distant from London, from whence they cannot speedily send Bail, It is *Ordered*, That the Attorney that followeth the Cause for such Defendant, shall leave with the Officer where the Writ of Error is allowed, or Outlawry is reversed, a Warrant or Note in writing subscribed under the hand of his Clyent and himself, That his Clyent at or before return of the Writ of Capias Utlegatum whereupon he was arrested, will appear and put in Bail as aforesaid to a new Original to be purchased within two Terms following; for which Bails in the cases aforesaid shall be taken no more then two shillings four pence; (being the antient Fee that is taken for Bails upon the Proclamation) And in all cases where the debt and damages sued for in the Original shall be under Twenty pounds, then the said Attorney to leave a Warrant or Note in writing subscribed as aforesaid, That the Defendants Outlawed upon return of the said Writ of Capias Utlegatum, shall and will appear to the Plaintiffs Suit, as aforesaid.

4. And it is further *Ordered*, That all reversals hereafter made shall be entered upon the same Roll where the Exigent is awarded being the most proper and fittest place for the safety and quiet of all persons outlawed, and their Executors to find the said Reversal in future times, and not upon other Terms and Rolls as is now used.

### *Sheriffs.*

5. For prevention of the great and common Abuses daily committed by Sheriffs and Bailiffs, by enlarging persons arrested upon Writs of Capias Utlegatum before Judgment, without any Superseas at all, whereby the Creditors are oftentimes deprived of their due debts with loss of their charges of Suit, It is *Ordered*, That if any Sheriff or other Officer whatsoever after the end of this Hillary Term shall set at liberty any person arrested upon a Capias

<sup>(a)</sup> Former Orders —, 2 Ja. I. Mich. 12 Ja. I. Mich. 12 Geo. I.

<sup>(c)</sup> Cap. 3.

<sup>(b)</sup> Mich. 17 Car. II. Hil. 15 & 16 Car. II.

*Capias Utlegatum* before Judgment, without a lawful *Superſedeas* in that behalf, that upon Affidavit thereof legally made, the party grieved shall have an Attachment against such Sheriff or Officer so offending; and upon examination thereof the party so offending, to undergo such punishment by Fine, Imprisonment, or otherwise as by the Court shall be thought fit; And the party may also take his remedy by Action of the Case upon the Escape, according to Law, wherein he shall have the Assistance of the Court. (a)

*Tbo. Richardson,* } *Francis Harvey,*  
*Richard Hutton,* } *George Croke.*

## Hillary, 8 Car. I. 1632.

*De Termino Sancti Hillarii Anno Regni Domini Caroli nunc Regis Anglie octavo.*

Attorneys and Clerks.

**W** Hereas it appeareth, that many ignorant persons not bred up in this Court, nor in any *Inne* of Court or Chancery, have been admitted to be Attorneys of this Court, to the great discouragement of many good and sufficient Attorneys in the same; and many Attorneys contrary to the Antient usage of this Court, permitted to draw and enter their own causes in the Prothonotaries Offices, by reason whereof many gross Errors are daily committed, this Court ill served, the Kings Subjects prejudiced in their Suits, and many sufficient Clerks wholly attending the Prothonotaries Offices greatly discouraged and decayed: And whereas it is evident by the antient usage and many former Orders of this Court, That the business in the Clerks in the Prothonotaries Offices, and the practice of Attorneys, have been and ought to be distinct Employments; And for that it will be of Ornament and great use to this Court, to be attended with skilful Clerks able to do the service of it, and the learning of the Law is much seen in the exact Forms of good pleading, Therefore to encourage Clerks of the Prothonotaries Offices to go on in their Profession; And for remedy of present, and prevention of future Evils, It is this present Hillary Term by the Justices of this Court, Ordered as followeth:

1. **F**irst; All Clerks of Prothonotaries Offices, and Attorneys of this Court, who have heretofore promiscuously exercised the distinct professions of Clerk and Attorney, before the last day of *Easter* Term next coming, shall make election and declare unto the Prothonotary of whose Office they are, whether

of the said Professions they intend to follow; And shall for ever waive the other, except in some particulars hereafter mentioned.

2. *Item*, According to the auncient usage and divers Orders of this Court, no Attorney shall from henceforth enter or exemplifie any Common Recovery, or draw, copy, or enter, any declaration, Plea, Issue, demurrer or other cause Issuing out of the Prothonotaries Offices, but shall make choice of some Clerk of that Prothonotaries Office wherein himself entred to do the same, upon pain of suspension from his practice for the space of two Terms, and further punishment at the discretion of this Court for the first Offence, and for the second Offence, to be expelled the Court for ever. Provided, that such Attorneys as for the space of ten years last past at the least have entred their owne Causes, whose Names shall be written in a Table signed by the Prothonotaries of this Court before the end of *Easter* Term next, shall notwithstanding be hereby permitted during their Lives to enter such causes as are drawn by themselves, and wherein they are Attorneys.

3. *Item*, None hereafter shall be admitted to be an Attorney of this Court, unless he have served a Clerk or Attorney of this Court by the space of six years at the least, or such as for their education and study in the Law shall be approved of by the Justices of this Court to be of good sufficiency and every of them admitted of one of the Inns of Court or Chancery. (b)

4. *Item*, No Clerk of a Prothonotaries office shall hereafter prosecute and defend as an Attorney of this Court any personal Action whatsoever upon pain to be suspended and punished as aforesaid.

5. *Item*, None shall from henceforth be admitted a Clerk of a Prothonotary's office, but such only as have served a Prothonotary or Clerk in a Prothonotary's Office for the space of Six years at least, and to be approved to be of good sufficiency and behaviour, and likewise be admitted of one of the Inns of Court or Chancery.

6. *Item*, No Clerk of a Prothonotaries office shall hereafter prosecute and defend as an Attorney of this Court any personall action whatsoever upon pain to be suspended and punished as aforesaid.

7. *Item*, The Names of all such as are to be allowed Clerks of Prothonotaries offices, and to have access to the Records of this Court, shall before the end of *Easter* Term next be fairly written in a Table, and subscribed by the Prothonotaries of this Court; which Table shall remain in the Treasury of the same Court; and that such Clerks for dispatch of their Business and writing of precedents for increase of their knowledge, shall have

(a) Mich. 17 Car. II.

(b) Mich. 1654. *Sess.* 1.

have access to the Records of this Court without paying any fee for the same.

8. *Item*, the Prothonotaries of this Court shall not from henceforth deliver any Plea Roll or Common Roll to any whose names shall not be registered in the said Table.

9. *Item*, No Attorney of this Court already admitted shall from henceforth remove or cause to be entered any of his Causes out of the Prothonotaries Office wherein he is now settled and his Causes entered; And that such Attorneys whose Causes are now entered in more Offices than one, shall be restrained to enter in one Office only, (a) And also that every Attorney hereafter to be admitted, shall from henceforth cause to be entered all his causes in that office where he first settles and no other, unless it be by the leave and assent of all the Justices of this Court first had and obtained under all their hands upon reasonable cause to them shewed, upon pain of being expelled the Court for ever; And no Prothonotary Clerks shall remove from the Office wherein he first settles, without the like leave under the pain aforesaid.

10. *Item*, The Attorneys of this Court shall from henceforth duly enter their appearance upon all Original Writs, Writs of *Capias*, and all other Writs returnable in this Court wherein the Defendants appearance ought to be entered, and shall likewise duly put in writs of *Superfedeas* to such Exigents as they appear unto, according to the ancient usage of this Court, and sundry former Orders made in this behalf under pain to be expelled the Court for ever.

11. *Item*, The Attorneys of this Court shall from henceforth duly repair unto the Prothonotaries Office, there to demand and take copies of declarations, Issues and other Pleadings; and that no Clerk of the said Offices shall be compelled to deliver any declaration or other copy, or to shew any deed or writing in *Curia prolat'*, Elsewhere then in the said Office, and if any Attorney shall refuse to take or pay for his said copies, then upon Complaint and proof thereof made to this Court, to pay forthwith to the Clerk double his Fees, or else to be put out of the Roll of Attorneys and not to be re-admitted without Fine at the discretion of the Justices of this Court, paying also the said double Fees according to an Order of *Michaelmas Sexto* and *septimo Regine Elizabethæ*. (b)

12. *Item*, The Clerks in every Prothonotaries office according to the ancient usage of this Court, shall from henceforth duly attend the said Office during the Term.

13. *Item*, No Officer, Clerk, Attorney or Attorneys Clerk of this Court, shall contrary to a former Order made in *anno quinto decimo Regine Elizabethæ*, (c) hereafter sue forth

or procure by any means directly or indirectly any *Latitat* or *Quo minus*, or shall prosecute and follow for the Plaintiff any Action, bill or suite upon any such process of *Latitat* or *Quo minus*, upon pain for the first offence to be suspended and punished as aforesaid; And for the second to be expelled the Court.

14. *Item*, No Prothonotaries Clerks shall from henceforth demand or receive any more than their due and ancient Fees; And forasmuch as the said Clerks as well for the skill and knowledge requisite to their profession, as for their great care and pains taken in their calling, do deserve their due and ancient Fees allowed by the Court, If therefore any Attorney of this Court shall from henceforth endeavour to draw or procure any Clerk to draw or enter his causes for less or other than the said due and allowed Fees, to the damage and discouragement of experienced Clerks, that then such Attorney so offending upon complaint and proof made thereof to this Court, shall be expelled this Court for ever. And if any Clerk shall be found to offend therein, then the Clerk so offending to be utterly disabled and expelled the Court for ever.

15. Lastly, Every Attorney of this Court shall from henceforth every Term duly pay unto the Prothonotary in whose Office he enters, for all his entries of the same Term, And if such Attorney do not pay for his said entries the same Term or before the end of the next Term after such entry made, then such Attorney upon Complaint to the Court of such default shall be put out of the Roll of Attorneys according to the said Order of *Michaelmas sexto et septimo Regine Elizabethæ*. (d)

Ro. Heath, } George Vernon,  
Richard Hutton, } Fr. Crawley.

## Trin. 22 Car. I. 1646.

Concerning the filing of Writs of Covenant, Writs of Entry, Warrants of Attorney, and other Writs relating to Fines and Common Recoveries.

*Whereas this Court is informed, that divers Writs of Covenant, and other Writs whereupon Fines be levied, and Writs of Dedimus Potestatem for acknowledging of Fines, and divers Writs of Entry, Summons and Seisin, and Warrants of Attorney, whereupon Common Recoveries be suffered, have been of late times lost and kept unfiled; And whereas it hath now and this last Term appeared to this*

(a) Trin. 21 Car. II.

(b) Stat. 2.

(c) Stat. 8. & Mich. 6 & 7 Eliz. Stat. 4.

(d) Stat. 1.

this Court, that great damage hath accrewed and still is likely to accrew to several persons by the Misprisions and Neglects of Attorneys, Clerks and Officers herein; And whereas by the Statute made xxiii Elizabeth, (a) for avoiding of Errors and such Mischiefs, provision is made, that the same Writs and other proceedings thereupon may be enrolled, and that the Inrollment thereof shall be as good, sure and valid in the Law, as the same being extant were or ought by Law to be; and by the same Statute it is also Enacted, That the Justices of this Court for the Time being (other then the Chief Justice) should take Order in all needful and convenient matters for the said Inrollments, giving them power also to examine and punish by Fine and Amerciaments any Clerks, Sheriffs Deputy, Attorney or other person for his or their Misprision, Contempt and Negligence touching the premises: Wherefore this Court doth declare and direct, That all Attorneys, Clerks, Sheriffs, Deputies and Officers be from henceforth more careful to file their Writs of Covenant, Entry, Summons and Seifins, and other the Writs in the Statute mentioned, and to make due Returns thereof, and to do all other Things pertaining to their several Offices, which the Law requires to be by them performed touching the said Fines and Recoveries, upon pain of such Fines and Amerciaments as the Court may assess upon them by the said Statute, which this Court declares they will from time to time put in full execution according to the said Act of Parliament, for the punishment and prevention of the great Mischiefs which shall or may happen by such Misprisions, Neglects and Contempts as aforesaid.

Edw. Reve,  
Peter Pheasant.

### Trinity Term, 1649.

Writs.

Whereas all Writs Original returnable in this Court, ought by the Law, and by the Course of the Court to be brought to the respective Philazers of the County where the Action is laid, to be by them Recorded: And whereas the Capias, Alias & Pluries, and all other Mesn Proces thereupon, untill the Exigent ought to be made by the said respective Philazers according to their Oaths and duty of their places, Yet divers Attorneys and others contrary to the Law and Course of the Court, do make the said Capias and other Proces, and procure them to be sealed without com-

ing to the Philazer for the same, and do upon such Capias cause the people to be arrested and kept in Prison, and often to be outlawed, no Original being sued out or returned, contrary to the Law, to the intolerable vexation and wrong of the people in their Bodies and Estates, which Writs so unduly made ought not to be sealed by the Clerks of the Seal of this Court: For the better prevention of the said abuse, And that the Clerks of the Seal-Office may have sufficient knowledge of such Writs, the Respective Philazers, of the Court are hereby enjoined, And it is Ordered by the Court, That the said Writs issuing out of the Philazers Office be stamped by the Respective Philazers, so as the Clerks of the Seal-Office may know it hath passed the Philazer.

And it is further Ordered, That the Clerks of the Seal Office shall not Seal any of the said Writs, whereupon there shall not be the Philazers Stamp as aforesaid. And the Attorneys and others whom it may concern are to take notice, that the Court will duly put the Law in Execution against such as shall offend in the premises. And the Philazers likewise are hereby to take notice, That the Court doth expect they should procure the Original to be duly sued forth and filed according to their Oaths and Duty of their places; and that the Court will severely punish their neglect herein.

Oliver St. John,  
Peter Pheasant.

### Michaelmas, 1649.

De Termino Sancti Michaelis Anno Domini  
1649.

Rolls.

Whereas by the ancient course and usage of this Court, noe Attorney or Prothonotaryes Clerk of this Court ought to carry the Rolls of this Court into the Country, but ought duely and fairely to Enter and then to bring in and docquet their said Rolls in the respective Prothonotaryes Offices of this Court from whence they received the same, in such convenient time as the same might be examined by the said Prothonotaries, and also be bound up by the Clerk of the Essoines of this Court for the time being, by the Essoine day of every Subsequent Term, Easter only excepted.

And whereas upon the breach and neglect of this ancient and Laudable Course and usage, and for prevention of the Mischiefs growing and happening thereupon, the Justices of this Court in Pasche duodecimo Jacobi made a good Order upon several penaltyes therein expressed, which Neverthelejs hath not taken that good effect

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effect as was intended, by reason (as it is conceived) the times thereby limited for Entering and bringing in the said Rolls was too Short.

And whereas it daily appeareth, that many Attornyes and Prothonotaries Clerks of this Court have of late used again to carry their Rolls into the Country, And also delayed to bring in their Rolls into the Prothonotaries Offices untill Essoine Eve of the subsequent Term, some others not untill the next Terme, and others do not bring them in at all, whereby many times Executions have been executed and no Judgments were to be found upon Record and oftentimes Motions made in Arrest of Judgment, and no Issue Rolle could be had or found when the Court required the same, which is contrary to the said ancient course of this Court, and contrary also to the said former Order of this Court in that behalf made, It is therefore this present Michaelmas Term declared and ordered, by the Justices of this Court.

1. That from henceforth no Attorney or Prothonotaries Clerk of this Court shall carry any Rolls of this Court into the Country, upon payne to be put out of the Rolle of Attornyes of this Court, and out of the Prothonotaries Office for the first Offence; and for the second offence to be committed to the Fleet and expelled this Court.

2. Item, That every Prothonotaries Clerk, and every Attorney of this Court that shall in any one Term enter five Rolls or under, Shall within fourteen dayes after the end of every Term (Easter Term only excepted) And that every Prothonotaries Clerk, and every Attorney that shall in any Term enter above five Rolls, and to the Number of halfe a file of Rolls, shall within twenty four dayes next after the end of every Term (Easter Term only excepted) deliver in, a docquet of all such Rolls as they shall receive from the Prothonotary well and fairly entred into such Office from whence they received such Rolls; And that every Prothonotaries Clerk, and every Attorney of this Court that entreth in any one Term above half a file of Rolls, and under a file of Rolls, shall within thirty four dayes after the end of every Term (Easter Term only excepted;) And that every Prothonotaries Clerk, and every Attorney that entreth in any one Term one file of Rolls, and upwards, shall within forty four dayes next after the end of every Term, (Easter Term only excepted) deliver in and docquet all his Rolls well and fairly entred, upon payne to be put out of the Prothonotaries Office, and out of the Rolle of Attornyes of this Court for the first offence, and for the second to be committed to the Fleet, and expelled the Court.

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3. And it is further Ordered, That the Clerk of Essoynes of this Court for the time being shall have liberty to peruse the several books and papers of the Prothonotaries of this Court by them used for the delivering out of their Rolls to their several Clerks and Attornyes of their several Offices, thereby to take notice what Rolls were by them delivered out and be not brought in within the times above Limited; And the second day of every Term the Clerk of the Essoynes of this Court, shall deliver to the Justices of this Court, in open Court, a note in writing of the Names of such Clerks and Attornyes as he shall find faulty herein, and of their several Offences against this Order; And for his encouragement in so Needfull a Service It is Ordered That every offender herein as often as he shall offend shall pay to the Clerk of the Essoynes ten shillings for every Rolle from time to time so left out and wanting as aforesaid, and that in consideration thereof all penalties heretofore Ordered to the Clerk of the Essoynes for keeping out of the Prothonotaries Rolls to Cease: And for the Rolls of every Easter Term the same shall be brought in and doggetted by the severall Clerks, and Attornyes of this Court in the respective Prothonotaries Offices of this Court from whence the same Rolles were delivered out upon or before the first day of Trinity Terme next following as heretofore hath been used, upon the like penalties (of putting out of the Rolle and office, and of Commitments and expulsion as aforesaid. (a)

4. And it is further Ordered, That the Clerk of the Essoynes of this Court shall not deliver any of the Rolles which he hath received back from the Prothonotaries to any Clerk or Attorney of this Court, or to any other person; But shall duely binde up the same Rolles; And that he shall not deliver any cleane Rolles for the Prothonotaries Offices but to the Prothonotaries themselves, or to such of their Clerks as they shall send for the same upon pain to pay to the poor mans Box of this Court twenty shillings for every Roll which he shall so deliver contrary to this Order.

Ol. St. John, } Peter Warburton,  
John Puleston, } Edward Atkins.

Michaelmas, 1649.

De Termino Sancti Michaelis Anno Domini  
1649.

Bail.

II. *Whereas many Inconveniencies and Mischiefs do happen unto the Plaintiffs in Causes*

(a) Mich. 2 Geo. I. Hil. 2 Geo. I. Easter 5 W. & M. reg. 2. Easter 34 Car. II. Trin. 29 Car. II. Mich. 1654. Stat. 7.



*Causes removed out of Inferiour Courts into this Court, by reason of the not filing of Bayls taken in such cases in due time, and sometimes notwithstanding the great care and diligence of the Justices of this Court used for the taking of good Bayle, the Bayl doth prove insufficient which happeneth by reason that the Plaintiffs nor their Attorneys do not enter their Caveats for good Bayl with the Justices of this Court according to the ancient course in that case heretofore used: For Remedy whereof,*

*It is Ordered this present Michaelmas Term, That the Plaintiffs or their Attorneys in such Causes hereafter to be removed, do duly enter their Caveats for good Bayl with all the Justices of this Court according to the ancient Course; And that the Attorney for the Defendant which shall remove any such Cause, shall give notice unto the Plaintiff or his Attorney in the Inferiour Court, of the same time when the Bayl shall be put in, and of the names of the said Bayl, and where they live, and shall make Affidavit of such notice: And if the Plaintiff or his Attorney after such notice will not attend to take exception to the Bayl at the time of the taking thereof, nor within (a) 14 dayes after, that then the said Bayl shall be forthwith filed by the Attorney that sueth forth the Writ, upon pain to be put out of the Roll of Attorneys of this Court; And if the Plaintiff or his Attorney shall within (b) fourteen dayes take exception to the Bayl, then such Plaintiff or his Attorney that takes exception, shall give notice thereof unto the Defendant or his Attorney, and make Affidavit of such notice within the fourteen dayes after the Bayl taken.*

*And for that many times prisoners are committed to the Fleet upon Habeas Corpus, and the Commitments are not filed with the Prothonotary, and so not recorded, whereby many times Prisoners escape, and no Action lies against the Warden of the Fleet for the same, It is therefore Ordered, That the Attorney that sueth forth the Habeas Corpus for such Commitments shall duly file the same in the Prothonotaries Office, that it may be recorded as it ought to be, upon pain to be put out of the Roll as aforesaid; And that every Writ whereupon any Bayl is taken in Court shall be made returnable at a day certain, and the Bayl thereupon shall be put in upon the Return of the Writ, and not before nor afterwards. (c)*

*Oliver St. John,  
Peter Warburton,  
John Paleston,  
Edw. Atkins.*

## RULES and ORDERS FOR THE Court of Common Pleas

*At Westminster, made and published  
by the Judges of the said Court in  
the Term of St. Michael, in the  
Year 1654.*

### I. Concerning Attorneys and Officers.

**T**HAT all Officers and Attorneys of the Court, be admitted of some Inns of Court or Chancery, by the beginning of *Hillary* Term next, or in the same Term wherein they are admitted Officers or Attorneys; and be in Commons one Week in every Term, and take Chambers there; or in case that cannot be conveniently, yet to take Chambers or Dwellings in some convenient Place, and leave notice with the Butler where their Chambers or Habitations are, under pain of being put out of the Roll of Attorneys. (d)

That all Officers and Attorneys of this Court (e) appear in Person in this Court, upon or before the fourteenth day of *Michaelmas* Term; and upon or before the seventh day of every other Term, upon pain of ten Shillings for the first Default, twenty Shillings for the second Default, and putting out of the Roll for the third Default. The appearance to be entered with the Clerk of the Warrants, and the Defaulters to be delivered to the Court upon Oath (if required) within three dayes after the time required for appearance.

That every Sheriff have his Deputy in Court to return and receive Writs, and that each Deputy yearly before *Hillary* Term have his Name and the Place of his residence in *London* or *Westminster*, set and continued up in Tables, in the Office of the Clerk of the Warrants. (f)

That the Clerks of Assize, their Deputies or Assistants, do personally appear with their *Posteas* on the first day of *Easter*, and *Michaelmas* Term; and the Deputy Sheriffs and all other Officers of the Court do personally appear by the *Effoyn* day of every second Return of every Term; and continue there du-

ring

(a) Mich. 1654. 6B. 11 & 12. (b) Hil. 13 & 14 Car. II. (c) Mich. 1654. 6B. 10. (d) Trin. 29 & Mich. 36 Car. II. Mich. 4 Ann. (e) Hil. 14 & 15 Car. II. reg. 2. (f) Hil. 14 & 15 Car. II.

ring the residue of the Term without some just cause to the contrary allowed by the Court. (a)

That for the future Common Solicitors be not admitted to practise in this Court unless they are (b) admitted Attorneys of either Bench; provided that it extend not to the managing of Evidence at a Tryal, nor to private Solicitors or Servants of Corporations, or other Persons in the cases of their Masters.

That none be (b) admitted an Attorney of this Court for the time to come, unless he hath practised as a Common Solicitor in this Court by the space of five Years now last past; or hath served, or shall have served by the space of five Years as a Clerk to some Judge, Sergeant at Law, practising Counselor, Attorney, Clerk or Officer of one of the Courts of *Westminster*, unless his Master die or give over his Practice, and be also upon Examination found of good Ability and Honesty for such Employment; and that sufficient proof (to be put into Writing) be made of such Service to the Prothonotary upon a desire of Admittance, and filed with the Clerk of the Warrants without Fee.

That no Person practise in (b) another's Name, nor that any Attorney knowingly permit another to practise in his Name, upon pain of being put out of the Roll, excepting in Warrants of Attorney for common Recoveries.

That Attorneys dismissed by one Court from their Practice for Misdemeanor, be not (after Certificate) admitted to practise in another Court, it being contrary to the intent of the Law.

That no under Sheriff or Bayliff of Sheriffs or Liberties be admitted during such their Employment to practise as Attorneys, under pain of Expulsion from the Employment of an Attorney, and not to be readmitted.

That such Attorneys as have not been attending their Employment in this Court by the space of one year last past, unless hindered by Sickness, be not allowed their privilege of Attorneys.

That for the prevention of maintenance and brokerage, no Attorney be Lessee in an Ejectment nor (c) Bail for a Defendant in this Court in any Action.

## Secl. II. Concerning Sheriffs and Bayliffs.

**T**HAT, for the prevention and remedy of Delays and Abuses in Sheriffs, Under Sheriffs, Bayliffs of Liberties and their Deputies, and other Bayliffs of Sheriffs, &c. in execution of Process and Writs. That if it shall appear that any such Officer shall wilfully delay the execution or return of any Process or Execution, or shall take or require any undue Fees for the same, or shall give notice to the Defendant, thereby to frustrate the execution of any Process or Writ, or having levied Money, shall detain it in their Hands after the time of the return of their Writs, besides the ordinary Course of Amerciaments (the Contempt or Misdemeanor appearing) an Attachment, Information, Commitment, or Fine to be, as the Case requireth. And this as well in the Case of a late Sheriff, or Person beforementioned, as of them at present in Office.

And whereas Sheriffs, have taken immoderate and excessive (d) Fees for Execution of Writs of Possession and Restitution of Possession, contrary to Law; it is declared that such immoderate Fees ought not to be taken; and in case such shall be taken, the Court to proceed to punish the same according to Law, upon complaint thereof made.

That to reform Abuses by blank Warrants granted by Sheriffs, whereby Persons are arrested, and driven to extorted Compositions, for their Liberties without Process of Law; That no Warrant be granted out to any Officer to arrest or attach any Person before a Writ first come to the Sheriff. (e)

That to reform Abuses by blank Warrants granted by Sheriffs, whereby Persons are arrested, and driven to extorted Compositions, for their Liberties without Process of Law; That no Warrant be granted out to any Officer to arrest or attach any Person before a Writ first come to the Sheriff. (e)

## Secl. III. Concerning the reformation and Punishment of Abuses in general.

**O**Rdered, That a Jury of able and credible Officers, Clerks, and Attorneys, once in three years be impanelled, and sworn to enquire. (f)

1. Of the Points usually inquirable by the Writ, viz. Falsities, Contempts, Misprisions and Offences.

2. Of such who have been admitted Attorneys or Clerks, and are notoriously unfit, their Names to be presented to the Court, and they to be punished or removed, as the case shall require.

3. Of new or exacted Fees, and of those that have taken them, under whatsoever pretence, and to prepare and present a Table of the due and just Fees, that the same may be fixed and continue in every Office; and likewise for the Fleet.

And that some Persons be enjoined and sworn to give evidence, viz. some Clerks of the Court, and some Attorneys in every County, not excluding others.

## Secl. IV. Concerning the better preservation of Order among the Officers and Clerks, and observation of breach of Orders and Misdemeanours.

**T**HAT the Court do once every year in *Michaelmas* Term nominate twelve or more able and credible practisers in the Court to continue for the year coming for these purposes hereafter limited.

That

(a) Hil. 14 & 15 Car. II. (b) Stat. 2 Geo. II. cap. 23. 12 Geo. II. cap. 13. (c) Mich. 6 Geo. II. reg. 5. (d) Stat. 3 Geo. I. cap. 15 & 16. (e) Stat. 6 Geo. I. cap. 21. Hil. 14 & 15 Car. II. reg. 1. (f) Easter 9 Eliz.

That they or any six of them examine such Persons as shall desire to be admitted Attorneys, and appoint convenient Times and Places for the same: And in order therunto, that such Persons as shall desire to be admitted Attorneys, first attend the Prothonotary with his proof of Service, then to repair to the Persons appointed to examine Attorneys, and being approved, to be presented to the Court with the assignation of his Approbation and then to be sworn in open Court, unless some just exception be against him.

That they give Information to the Court from time to time of breaches of Orders, and miscarriages of Officers, Attorneys and Clerks.

**Sect. V.** That a settled course of Practice and Proceedings be settled, especially in those Cases where there hath been uncertainty, and that the Inconveniences in Process, Proceedings and Pleadings may be regulated in a due course. In order whereunto these several things are ordered and directed according to the method of Proceedings.

*Concerning the entring of Records and the Persons by whom.*

**T**Hat no Rolls be delivered to be entred but only to Clerks, or such Attorneys as have entred for the space of four years last past, for themselves.

That a Table be set up of the Names of the Officers and Clerks that are to be admitted unto the Rolls of the Treasury: And that such and no others be admitted thereunto, and that they may resort there as well for their Occasions, as for their Learning and Instruction, during the Term, and also twice in every Week from a Month after the Term, and that every such Clerk duly attend as well the Prothonotaries Office in the Term time as for the entring of Judgments upon Summons given by the Prothonotary respectively.

**Sect. VI.** *For the prevention of the undue issuing of Judicial Writts: And falsifying of Records.* It is Ordered,

**T**Hat all Executions and all other Writts issuing out of the Prothonotaries Offices be duly signed by the respective Prothonotaries before the same be sealed, and that no exemplification of any common Recovery or other Record which ought to be examined and

signed by the Prothonotary, be sealed before the same be signed by the Prothonotary. Nor that any exemplification (excepting exemplifications of Fines and common Recoveries of the present or next precedent Term) be sealed before they be first signed and examined by the Clerk of the Treasury.

*And because the intermeddling and dealing of Clerks in more than one Prothonotaries Office at one time, hath been an occasion of disorder and uncertainty in Proceedings: It is likewise Ordered,* That every Prothonotaries Clerk do apply himself from henceforth to one Prothonotaries Office only, and do give his attendance and make his Entries in that Prothonotaries Office. (a)

**Sect. VII.** *Concerning Rolls and Records, and their Entries and Bringing in.*

**T**Hat the whole Proceedings of any Cause after Appearance be carried on in the Office of that Prothonotary where it was first entred, or Declaration delivered.

That no Rolls be carried into the Country, under pain that the Offender be excluded from entering any more Rolls afterwards as a Clerk.

That the Common Rolls of every Term, except *Easter*, be brought into the Prothonotary fairly entred, and docketted at least ten days before the *Effoin* day of the succeeding Term, under pain of ten Shillings for every Roll wanting. (b)

And that no Rolls be delivered to such Person after any such Offence the second time, without special Order.

That the respective Prothonotaries before the third day of the next Term, do give in the Names of the Defaulters and Defaults unto the Court in Writing.

That the Rolls brought into the Prothonotary be delivered over to the Clerk of the Warrants the day before the *Effoin* day of the ensuing Term, together with a Note of the Rolls that are wanting, the same Note to be subscribed by the Clerk of the Warrants, and re-delivered to the Prothonotary.

That the Clerk of the Warrants within five days after Receipt of the Rolls from the Prothonotary, do deliver over the Common Rolls to the Clerk of the *Effoins*, taking the like Note from the Clerk of the *Effoins* of the Rolls wanting.

That the Clerk of the *Effoins* bind up the Rolls, viz. the first part before the appearance day of the second Return, the second part before the *Effoin* day of the third Return, the third part before the *Effoin* day of the next Term.

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That

(a) Trin. 21 Car. II. 13 Fe. I. Mich. 1649.

(b) Mic. 2 Geo. I. Easter 5 W. & M. reg. 2. Easter 34 Car. II. reg. 3. East.

That the Rolls of *Easter* Term be brought to the Prothonotary, on or before the first day of *Trinity* Term, delivered to the Clerk of the Warrants within six days, to the Clerk of the Effoins within five days after, to be bound up before the Effoin day of *Michaelmas* Term, each party subscribing the like Notes, and the penalties the same as before. (a)

Secl. VIII. Concerning Original Suits and Procefs, and where laid.

THAT Actions upon the Case, Trespafs for Goods, Assault or Imprisonment arising in any *English* County, be laid in their proper Counties, unless they arise where Justices of *Nisi prius* seldom come. And because Trespafs or Trover for Goods, Battery, Imprisonment and Slander must needs be notorious in what County they arise; the Attorney knowingly laying them out of the proper County (unless in the cases before expressed or for such other Causes as shall be allowed by a Judge of the Court, and duly made appear to be true) be severely punished. (b)

That although the Declaration be delivered seven days before the last day of the next pretedent Term, or after, yet before, (c) plea, upon Oath made, the *Visne* may be (d) changed upon Motion in the said transitory Actions the next Term after: And the Defendant to plead to the new Action as he should have done in the other without delay.

That the *Visne* may be changed (upon Oath) as before, though the Defendant come in by Exigent.

Secl. IX. Concerning Procefs, and serving thereof.

THAT according to the provision of the Statute of the one and thirtieth year of *Queen Elizabeth*, (e) all Attorneys that sue out Procefs of Exigent be careful that Writs of Proclamation be delivered, and the Sheriff do take care duly to execute the same.

That according to the Statute of the twenty third year of *Henry* the sixth, (f) a Prisoner taken upon a *Capias* in Procefs be not discharged till he hath given Bond to appear, unless the Plaintiff or his Attorney shall consent to take an appearance without Bail. And in such case the Warrant of Attorney to appear, to be subscribed or accepted by the Defendant's Attorney, and such Warrant not to be revoked, and an Attachment to be granted

against the Bayliff offending herein, or against the Attorney refusing to appear or procure an appearance, having so subscribed or accepted

And forasmuch as divers Sheriffs, Bailiffs of Liberties, and their Bailiffs respectively have of late time contrary to Law, and against former Orders of this Court, discharged Persons taken upon Outlawries without *Superfedeas*; It is hereby declared, that such dealing is an abuse; and that all such who have or shall discharge such Persons without *Superfedeas*, shall be severely punished. And that no Sheriff, Under Sheriff, their Deputies or Bailiffs, may from henceforth discharge or set at Liberty any Person or Persons arrested upon any *Capias Utlagatum* untill he receive a *Superfedeas* according to Law from the Officer or Officers thereunto appointed. (g)

Secl. X. Concerning a Habeas Corpus to Sheriffs and Gaolers.

THAT a *Habeas Corpus cum Causa ad faciendum & recipiendum*, directed to any Sheriff (other than *London* or *Middlesex*) not to be returnable *immediatè*, or in the vacation time, but at a day certain in Court in the Term.

That such *Habeas Corpus* to the Sheriff of *London* or *Middlesex* may be granted in Term or Vacation time returnable *immediatè*. (h)

That in case of *Habeas Corpus* returnable *immediatè*, the Sheriff ought to make his return the same day that the Writ is delivered, and to bring the Body immediately, as is required by the Writ, without permitting him to wander abroad by colour or pretence thereof.

That where a Writ of *Habeas Corpus* is directed to a Sheriff, Warden of the Fleet, Marshal or Goaler, the Prisoner is to be brought in custody according to the Writ at the day limited, without being permitted to wander abroad in the mean time upon pretence of such Writ.

That a *Habeas Corpus ad respondendum* may be granted to the Warden of the Fleet, or to the Keeper of an inferior Prison of a Liberry or Franchise, where a *Capias* is returned in Court, *Non est inventus*; such Writ to recite shortly the *Capias*, and to be returnable at a day certain in Court, and to be a good cause of *Detainer*, as well as where a *Capias ad respondendum* comes to a Sheriff.

That a *Habeas Corpus ad satisfaciendum* may be granted to the Warden of the Fleet, or to such inferior Goaler returnable in Court at

(a) Mich. 2 Geo. I. East. 5 W. & M. reg. 2. East. 34 Car. II. reg. 3. East. 12 Ja. I. Mich. 1649.  
 (b) Mich. 15 El. Secl. 15. (c) *Ante Carter versus Dormer, Costar versus Standen, Lucas versus Rud.*  
 (d) Not changed to a County Palatine or Town. *Ante Crasfel versus Croker, Herbert versus Shaw, Gardner versus Forbes*; nor in *Scan. Mag.* Lord *Griffin* versus *Rugby*; or Bill of Exchange or Note, *Ward* versus *Colclough*. (e) Cap. 3. (f) Cap. 10. (g) Hil. 15 & 16 Car. II. Mich. 17 Ca. II. Trin. 2 Ja. II. (h) Hil. 13 & 14 Car. II.

at a day certain, and the Number Roll of the Judgment to be endorsed upon the Writ by the Attorney who sues it out; and such Writs to be a Cause of detainer.

That if upon a *Habeas Corpus* the Prisoner be returned charged with Process out of the upper Bench or Exchequer, and not of the Common Pleas, the Prisoner may be committed with those Causes.

That if upon a *Habeas Corpus cum causa* the Prisoner be returned charged with a Process out of the Common Bench, though returnable at a day to come, the Prisoner may be committed with his Cause.

That if upon a *Habeas Corpus*, or *Cepi Corpus*, the party be returned in custody and Bailable, and special Bail requirable, the Bail not to be taken absolutely without consent of the Plaintiff or his Attorney, and if taken *de bene esse*, the Prisoner not to be discharged till the Bail be assented unto, or the Plaintiff over-ruled in Court to accept the same upon Examination.

That upon every Commitment by a Judge out of Court, the Prosecutor of the *Habeas Corpus* is to have one of the Prothonotaries Clerks present at the turning over of the Prisoner, that the Commitment may be duly entered and filed.

Sect. XI. Concerning Habeas Corpus to Inferiour Courts and Procedendo. (a)

THat Writs of *Habeas Corpus*, directed to the Inferiour Courts of London, Westminster, Southwark, and other Courts within five miles of London, may be returnable *immediatè*. And if the Defendant intendeth to be bailed, then upon, or within four dayes after allowance of the Writ, Notice is to be given in writing of the Names and addition of the Bail, the time when, and the Judge before whom the same is intended to be put in, to the Plaintiff or his Attorney, or him that caused the plaint to be entered; or if none can be found, then notice of the Premises to be left in writing with the chief Clerk of the Inferiour Court or his Deputy by the party that tenders the Bail, or his Attorney, and Oath made thereof; otherwise the Bail not to be taken. And a *Procedendo* granted if desired, before Bail accepted.

That if no Bail in such Cases be put in within eight days after the *Habeas Corpus* allowed, in those Courts when it is returnable *immediatè*, a *Procedendo* may be granted by any Judge of this Court, if desired before Bail taken.

And if Bail be taken in the absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*, and if no exception be

taken within twenty days after notice given to the Plaintiff or his Attorney of the names of the Bail, and before whom taken, then upon Oath made of such notice the Bail to be delivered out to be filed.

That if Bail upon a *Habeas Corpus* be taken before a Judge at his Chamber, and not excepted against, if not filed within four days after the twenty days, a *Procedendo* may be granted, upon Certificate that it is not filed.

That in Term time the Plaintiff in the inferiour Court may speed the Defendant to put in, or to file his Bail by Rules given in the Bill of Pleas; and if not filed according to rules, upon certificate thereof, a *Procedendo* to be granted.

That all Writs of *Habeas Corpus* returnable in Court, be returnable at a day certain.

That upon Bail taken of a Person in Custody, the Judges Clerk to deliver the Bail to the Prothonotary, to be filed, if assented unto; and to that end the Prothonotaries Fees to be deposited, but the Prisoner not to be discharged, until the Bail be assented unto, or over-ruled in open Court.

Sect. XII. Concerning special Bail.

THat if the Defendant appear upon the Summons, Attachment, or Distress, or by *Superfideas quia imprevidè*, or doth truly render himself upon the Exigent, no Bail requirable.

That in all Causes of removal, be it by *Habeas Corpus*, Privilege, or *Certiorari*, special Bail ought to be given. (b)

That in Causes where the Defendant comes in by *Cepi corpus*, be it Debt, Detinue, (c) Trespass for Goods, Action upon the Case (except slander) if the Debt or Damages amount to twenty pounds special Bail is to be given, except it be against an Heir, Executor or Administrator. (d)

That in Covenant because the Damages uncertain till Declaration, Bail at Discretion.

That in Battery, Conspiracy, false Imprisonment, no special Bail of course without special Motion and Order.

That in slander no special Bail, except in slander of Title, wherein to be left to the discretion of the Judges.

That in privilege other than for Fees and Disbursements as an Attorney in this Court, Bail at Discretion of the Court; in such case where in a suit by a common Person, special Bail is not required.

That if Bail be given upon reversal of an Outlawry, or removal by *Habeas Corpus*, the Original be shewn upon tendering of the Declaration, otherwise the Bail not liable; unless the

(a) Hil. 13 & 14 Car. II. (b) Ante Sect. 11. (c) Ante Coole versus Sankey. (d) Now by Stat. 12 Geo. I. cap. 29. Bail in no Case, unless Affidavit be made of the Debt, &c. and then 10 l. holds to Bail.

the party or his Attorney will voluntarily appear, or take a Declaration, without shewing of it.

That in case of a removal out of an inferior Court, or reversal, the new Original to agree in the nature of the Action, the sum in demand, and the County, otherwise the Bail not liable; but if the party will voluntarily appear to such varying original, to be good as to the Party; but if upon a Cause removed by *Habeas Corpus*, out of the Courts of *Canterbury, Southampton, Hull, Litchfield* or *Pool*, which are Counties where the Judges of *Nisi prius* seldom come, if the Action be transitory, it must be laid in the County of *Kent, Southampton, York, Stafford* or *Dorset*, where the Town and County lieth, and the recognizance to be taken accordingly.

That the principal rendering himself at any time after Bail put in, and before or upon the (a) day of appearance of the *Scire Facias* returned, *fiats feci*, or of the second *scire facias* returned *nihil*, or in case there shall be an Action of Debt brought upon the recognizance against the Bail, then if the principal shall render himself upon or before the Process returned served, no further Proceedings to be against the Bail.

#### SECT. XIII. Concerning Appearances, and Entries thereof.

THAT Appearances be duly entered with the Prothonotaries or Filizers of this Court respectively, with whom the same ought to be entered; but if special Bail be requirable in the Case, the Plaintiff not to be concluded by such appearances, if he insist upon it.

That where an Appearance is upon the Original Writ, if the Defendants appearance be not entered of Record, the Defendants Attorney to give his Hand to the Plaintiffs Attorney upon the delivery of the Declaration that he appeareth thereunto.

That any Attorney of either Bench accepting a Warrant to appear, or subscribing a Process, Declaration or Warrant to appear, be compelled to cause appearance, or be liable to an Attachment, or put out of the Roll, as the case requires; and the party not to be received to countermand such appearance after his Retainer. (b)

That no Person without Rule of Court, order of the Judge or Prothonotary, and notice to the adverse party or his Attorney, change or shift his Attorney; and such Attorney newly coming in, to take notice at his peril of the Rules whereunto the former Attorney was liable had he continued.

That a Retainer of an Attorney of the Common Pleas, by an Attorney of the Upper Bench, *Et à Converso*, be a sufficient excuse to the Attorney so retained, acting according to such Retainer, and the Attorney so retaining without Warrant from the Party, to be subject to the punishment.

That if a *Capias* be returned in Court *non est inventus*, against a Prisoner in the Fleet, he be compellable to appear upon a *Habeas Corpus ad respondendum*, as well at the Suit of a stranger, as at his suit whereupon he is imprisoned, and to answer to a Declaration according to the Rules of the Court, or that Judgment be entered against him.

That he that reverleth an Outlawry have an Attorney of Record present, who must undertake an appearance to a new Original. And such Attorney shall be compelled to appear; and that the Defendant or his Attorney give notice to the Plaintiff or his Attorney of such reversal the same Term, or in the vacation next after it.

#### SECT. XIV. Concerning Imparlanes.

THAT forasmuch as some Inconveniencies do sometimes happen to Plaintiffs by entering their Declarations in special Actions, It is therefore Ordered, that the Plaintiffs in such special Actions shall have liberty to enter the Imparlanes the Term following, entering the same of the first Term with an *Incipitur*, as it hath been usual in *Quare Impedit*; but that all other Imparlanes be duly entered before any Issues, Demurrers or Judgments thereupon be entered.

That if the Defendant appear the first Term, and give no Rules to declare, the Defendants Attorney may the second Term be compelled to (c) accept of a Declaration with Imparlance, and the Declaration may be entered as of that Term, with an Imparlance over to the next Term, or in the first Term with an *Incipitur* as before, as the Case shall require.

That if the Plaintiff declare not the second Term, though the Defendant give no Rules, (d) yet a Nonsuit may be entered at the end of the second Term upon a continuance over by him entered by *dies datus*, but not the third Term, or after.

That upon a meer real Action, or a bare *clausum fregit*, an Imparlance of Course. But in Dower after view had, if the day to appear be upon the first Return of any *Hillary* or *Trinity* Term, no Imparlance without consent or rule of Court.

That

(a) The Render must be made before the rising of the Court, on the Appearance Day of the return, or it will be void. (b) *Hil. 6 Geo. II. reg. 2.* (c) Defendant not bound to accept a Declaration after the second Term, nor can he sign a *Non-Profs* after the Vacation following the second Term. (d) Now Defendant cannot sign *Non-profs* without giving Rules; and see *Hil. 9 Ann. reg. 3.*



That in Ejectment or any personal Action, if the appearance be the first Return of *Hilary* or *Trinity* Term, no Imparance without consent or special rule in such Causes, other than in *London* or *Middlesex*. If the appearance be before *Craftin'* *Martin'* or *mensē Pasch.* no Imparance without consent or special Rule. But if upon or after those Returns, an Imparance of Course.

In *London* or *Middlesex* if the appearance be before *Craftin'* *Ascen.* or before the last Return of any other Term, no Imparance without consent or special Rule; but the Defendant to plead as of that Term within fourteen days after the end of the Term upon Rule given to answer; but if of *Craftin'* *Ascen.*, or the last return, then an Imparance of course. (a)

Sect. XV. Concerning Rules to Declare and Plead.

That no Judgment by *nihil dicit* be entered untill there be a Rule to plead first given in that Prothonotaries Office where the Cause is entered, and the day by such Rule be past, and that such Rules be only given in the Bills of Pleas, or other remembrances for that purpose only, to be in the custody of the secondary of the respective Prothonotaries during the time limited for giving of Rules, to the intent that all Persons concerned may have recourse to the said secondary, and to see the same *Gratis*; and that Clerks who usually enter for Attorneys, may give Rules for answer in the said Remembrances in all their own Causes wherein there hath been Imparances, except in Ejectments, so as they enter the same Rules in the Office without carrying any of the said Remembrances out of any of the said Offices; and that the Secondary set down upon the remembrances the day wherein such Rules are given, and that no Rules to declare or answer be given after three dayes exclusive after the end of any Term, and such Rule to be out at four days inclusive of the day wherein the same is given.

That in all Actions except Replevin (after Rules to declare are out, yet) if the Plaintiff or his known Attorney or Clerk be to be found, a Nonsuit for want of a Declaration not to be entered, unless the Plaintiffs Attorney or known Clerk be first called to for a Declaration. (b)

That if the Plaintiffs Attorney or Clerk be called to for a Declaration, and delivers it not to the Defendant or his Attorney sometime during that Term, then the Rule being out, the Defendants Attorney may enter a Nonsuit.

That if the Plaintiffs Attorney being called to for a Declaration cannot afterwards find the Defendants Attorney or Clerk, to save a Nonsuit, he may deliver a Declaration into the Prothonotaries Office where the Rules are given.

That when a Deed, Will, or Letters of Administration are to be shewn in a Declaration, the Attorney of the Plaintiff delivering a Declaration with a subscription, that the Defendant shall not be compelled to plead till the same be shewn, no Judgment by *nihil dicit* to be entered against the Defendant till the same shewn: nor any Nonsuit upon the Plaintiff if he shew the same before the end of the next Term.

If the Defendant be committed to Prison by Process out of this Court, or *Habeas Corpus*, the Prisoner entering his appearance with the Prothonotary in case of a plaint, or in case of attachment of Privilege; or with the Filizer in case of other Process, and giving Rules to declare, the Plaintiff not declaring before the end of the next Term after the Commitment, the Defendant in reference thereunto to be discharged of his Imprisonment by *Superseas* in the end of the next Term and liberty for the Plaintiff to declare upon that appearance the next Term after that, at the furthest. (c)

That if a Writ be returnable *quinque Pasch.* or the last return of any Term, the Defendant giving Rule, and calling for a Declaration, if it be not delivered according to the former directions, four days or more before the Effoin day of the ensuing Term, may enter a Nonsuit, though above sixteen days after the preceding Term. (d)

That the Plaintiff having declared and given Rules for answer, the Defendant is to deliver his Plea in writing to the Plaintiffs Attorney or known Clerk.

That if there be no such Attorney or Clerk to be found, or being found, refuseth to accept it, then the Plea may be left in the Office to save a Judgment.

That in any Case where a Plea or Declaration is left in the Office, no Nonsuit for want of a Declaration, or Judgment for want of a Plea, be entered.

That in cases of popular Actions and Informations, or real or mixt Actions, except Ejectment, no Judgment to be entered by Default, or *nihil dicit*, without motion in Court.

That upon *Nul tiel* Record pleaded, and no difficulty or variance appearing, Judgment be entered after Rule, without motion by the Plaintiff.

That after any Imparance of three Terms without any calling for answer, no Judgment to be entered without a Term's notice.

I

Sect. XVI.

(a) Mich. 3 Geo. II.

(b) Hil. 9 Ann. reg. 3. Ante Sciz. 14.

(c) Easter 5 W. & M. reg. 3.

Eaft. 8 Geo. I. 14 & 15 Car. II. reg. 3.

(d) Ante, Sciz. 14.

Sect. XVI. Concerning Declarations.

**F**OR avoiding of long and unnecessary repetitions of the Original Writ in Actions upon the Case, and personal Actions upon penal Statutes,

That Declarations in Actions of Trespas upon the Case or personal Actions upon any general Statute, namely, Hue and Cry, *Monopolies*, and for suits in the Admiralty, and such like, other than Debt, repeat not the Original Writ but only the nature of the Action, viz. A. B. was attach'd to answer C. D. in a Plea of Trespas upon the Case, or in a Plea of Trespas and Contempt, against the form of the Statute.

Sect. XVII. For the avoiding of the Common Bar and new Assignment.

**T**HE Declaration upon an Original Writ or Bill, *Quare clausum fregit*, may mention the Place certainly, and so prevent the use and necessity of the Common Bar and new Assignment.

That unnecessary (a) length of Declarations be forborn. And in order thereunto,

That in Actions of Covenant not to repeat more of the Deed than is necessary for the Assignment of the Breach, and not to repeat the Covenant in the conclusion.

That in Actions of Slander, long preambles be forborn, and no more inducement than what is necessary for the maintenance of the Action, but when it requires a special inducement or *Colloquium*.

That in Actions upon general Statutes the Declaration not to repeat the Statute, but to conclude against the form of the Statute in such case made and provided; as in case of Debt, upon the Statute of 2 E. 6. for Tythes, the 32 H. 8. for Maintenance, and 21 Jac. of Monopolie.

That Action of Debt upon a Judgment had in the Courts of *Westminster*, to recite only the Judgment. But if a Judgment had by or against an Executor or Administrator, Debt thereupon to repeat the Declaration and Judgment.

That before the Declaration actually entred the Plaintiff may (b) amend his Declaration, paying Costs or giving an *Imparlancc*, at the Plaintiffs election, by the Order of a Judge of the Court or Prothonotary: But after it is entred, if the Amendment be but a small matter that doth not deface the Roll, yet that before Issue or Demurrer entred, it be amendable by Rule of Court upon Costs, and liberty to plead, with a new or further *Imparlancc*.

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Sect. XVIII. To cause care in examination of the Declaration.

**T**hat if the Plaintiffs Attorney or Clerk deliver a Copy to the Defendants Attorney or Clerk, materially varying from the original Declaration, the disadvantage thereof not to be cast upon the Defendant, but on the Plaintiff, whose Attorney is paid for it.

Sect. XIX. Concerning Pleading.

**T**HE Common Bar and new Assignment be forborn, where the Declaration contains the certainty equivalent to a new assignment.

That Pleadings be succinct, without unnecessary Repetitions.

That in the pleading of an Outlawry the *mesne* Process be not repeated, but the Exigent and outlawry joined to the commencing of the suit.

That in pleading a general Statute, the Statute be not recited, as the Statute of 21 Jac. of Limitations.

Sect. XX. Concerning Demurrers.

**T**hat according to the Statute of 27 of El. upon Demurrers, the Causes be specially assigned, and not involved with general unapplied expressions of double, negative pregnant, uncertain, wanting form, and the like, but to shew specially wherein, that the other Party may (as the case shall require) either join in Demurrer, or amend, paying Costs, or discontinue his Action.

That it be declared, that Matters of form, as well on the part of him that demurs, as of him that joyns in all parts of the pleading, are discharged; unless such as are specially assigned upon the Demurrer. (c)

Sect. XXI. Concerning Trials, and notice of Trials and Inquiries.

**T**hat notice of Trials or Inquiries in *London* or *Middlesex* (the Defendant dwelling within forty miles of *London*) be eight days exclusive of the day wherein notice is given.

That if the Defendant live above forty miles distant from *London*, notice of such Trials and Inquiries in *London* or *Middlesex* be fourteen days, exclusive of the day of notice. (d)

That

(a) *Ante*, *Mackdonel versus Gunter*. (b) *Ante*, *Gran versus Brill*. (c) *Stat. 4 & 5 Anna, cap. 16*.  
(d) *Ante*, *Gorman versus Boyle*, and see *Trin. 2*, *Mid. 6 & Trin. 10 Geo. 1*.



That in all Issues to be tried by *Nisi prius* in *London* or *Middlesex* upon a Record of a precedent Term, the Copy of the Issue be brought to the Clerk of the Treasury, for the Ingrossing of the Record, four days at the least before the day of Trial of such Issue, and that all Causes to be tried in *London* or *Middlesex* be entered into the Marshals Book four days before the day of Trial.

That eight days notice exclusive be given upon Trials in the Country, and upon Writs of enquiry of Damages, in Writs of Dower and waste, and all other inquiries of Damages. (a)

That if the Plaintiff give notice of a Trial, and he proceed not, the Plaintiff not to take it down to trial again without new notice to be given, as is before expressed, unless by consent or Rule of Court.

But in *London* or *Middlesex*, if notice be given of a Trial for one sitting, and the Plaintiff be not provided to proceed: If he give notice before that sitting that he will try it the next sitting, that to be held convenient notice. (b)

That in case of such warning, and no proceeding, the Defendant upon motion to have his cost of his former attendance, to be taxed by the Prothonotary; unless the Plaintiff give the Defendant warning in (c) convenient time that he would not proceed; or shew cause to be allowed by the Court in excuse of such Costs.

That no Record of *nisi prius* be signed before the Issue be entered upon the Roll. (d)

That if the Plaintiff give notice for a Trial, and proceed not, the Defendant may take it by *proviso* according to Law, giving notice eight or fourteen days, as the Case requireth, as aforesaid.

That in *London* or *Middlesex*, if no warning for a Trial, then the Defendant not to take it by (e) *proviso*, to try it the same Term; but afterwards he may take it by *proviso* according to Law, giving eight or fourteen days notice, as the Case requires.

That if notice be given to the Attorney of the adverse Party of a trial upon an Issue joined, it be taken to be good notice: And Oath made of want of notice to the Attorney, to turn the proof of notice given to the party upon him that brought it down to trial in that case.

That if an Issue be joined above a year since in any case, then one (f) Terms notice to be given of the Trial. (g)

#### Sect. XXII. Concerning Trials at Bar.

That for the remedy of excessive Charges of Trials at the Bar, especially whilst the Jury lieth out, It is Ordered, that a Jury lying out one night after a privy Verdict delivered, there be allowed for the whole Dyet of each Jurymen that night no more than three Shillings four Pence apiece, and for two Criers to each of them no more than two Shillings ordinary, besides the charge of the Jurors Lodging.

That after a Verdict delivered in Court, the Jury and Officers to be paid their Charges and their Fees in the Inner Treasury, without going to the Taverns or Victualling Houses for that Cause.

#### Sect. XXIII. Concerning special Verdicts at the Bar, or by *Nisi prius*.

That in finding special Verdicts where the Points are single and not complicated, and no special Conclusion, the Council (if required) do subscribe the Points in question, and agree to amend omissions or mistakes in the *mesne* Conveyance, according to the Truth, to bring the point in question to Judgment.

That unnecessary finding of Deeds in *hoc verba*, where the question rests not upon them, but are only derivation of Title to be spared; and found shortly according to the substance they bear in reference to the Deed, as Feoffment, Lease, Grant, &c.

#### Sect. XXIV. Concerning new Trials.

That where a Verdict finds entire Damages where Damages are the principal, and part not actionable, though Judgment be arrested yet by rule of Court a *venire fac de novo* may issue as upon an ill Verdict, and upon the new Trial the party may sever his Damages. (h)

#### Sect. XXV. Concerning Judgments.

That in a Judgment by *non sum informatus*, or *nul dicit*, in *Eject firme* the *Capiatur* be entered upon the first Judgment.

That

(a) *Ante, Strangways versus Ascougb.* (b) *Ante, Smith versus Hoff.* (c) The Convenient time is two Days before the Commission Day or Day of Sittings. See *ante, Deighton versus Calton, Goodright versus Hoblyn, &c. Reg. Mich. 3 Geo. I.* (d) *Trin. 11 Geo. I.* (e) *Salk. 652.* The Defendant shall not try by *proviso* till there be a Laches in the Plaintiff, except in Cases where the Defendant is as a Plaintiff, as in *Replevin, Prohibition, Quare Impedit*, which are to have Return, Consultation and Writ to the Bishop. (f) Such notice must be given before the Effoine Day; *Ant. Buckame versus Pellow.* Judgment signed and no Inquiry within the Year, a Term's notice of the Execution of such Inquiry must be given. (g) Unless there have been some intermediate proceedings by notice of Trial or otherwise; in which case common notice only necessary. (h) *Ante, Smith versus Hayward.*

That upon a Cause removed by *Habeas Corpus* out of an inferiour Court, having Jurisdiction of the Cause, if Judgment be given for the Plaintiff, the Costs below to be considered and cast into the Judgment; if for the Defendant, the Charge of putting in Bail.

That the principal in any Bond or Bill obligatory do not for the time to come give Warrant to appear for, or confesse Judgment against his surety; and that after the two and twentieth of *January* next, no Judgment be confessed for, or given against the surety upon any such Warrant given by the principal.

That sixteen days be allowed for the signing of (a) Judgments after every Term, except *Easter* Term, upon Causes depending in the Term precedent.

And lastly, it is declared by the Justices of this Court, that as the Court doth expect that all the Rules and Orders before mentioned be duly observed; so It is further ordered, That all other former Orders and (b) Rules yet in force, not hereby altered, suspended, or annulled, be likewise observed and put in execution according to the true intent and meaning of the same.

Ol. St. John,  
Edw. Atkins,  
Matthew Hale,  
Hugh Windham.

*Sec. XXVI.* The Oath to be taken by every Attorney of the Court of Common Bench at *Westminster*, before his admittance, to be administered openly in Court, by the chief Prothonotary.

*YOU* shall do no falsehood or deceit, nor consent to any to be done within this Court: And if you shall know of any to be done, you shall give knowledge thereof to the Lord Chief Justice, or other his Brethren, Justices of this Place, that it may be reformed. You shall delay no Man for lucre or malice. You shall increase no Fees, but you shall be contented with the old Fees accustomed. You shall plead no foreign Pleas, nor sue any foreign Suits unlawfully, to the hurt of any Man; but such as shall stand with the Order of Law, and your own Conscience. You shall seal all such Process as you sue out of this Court, with the seal thereof: And see the Fees paid for the same. You shall not wiltingly nor willingly sue, or procure to be sued any false suit, nor give aid or consent to the same, upon pain to

be expelled from this Court for ever. And further, You shall truly use and demean yourself in the Office of an Attorney within this Court, according to your Learning and Discretion. (c)

So help you God.

## RULES and ORDERS

OF THE

### Court of Common Pleas

*Made since his Majesty's Restoration, taken from the Originals of the said Court, with the Allowance and Approbation of the Right Honourable the Lord Chief Justice North, and the Judges of that Court, and first printed, 34th Car. II. 1682.*

*De Termino Sancti Hil. Annis 13 & 14 Car. II. Regis 1661.*

#### Rules Concerning Bails. (d)

**T**HAT Writs of *Habeas Corpus* directed to the inferior Courts of *London*, *Westminster*, *Southwark* and other Courts within five miles of *London* may be returnable immediate. And if the Defendant intendeth to be bailed, then upon or within four Days after allowance of the Writ, the Day of which allowance being endorsed by such Officer as allows the same on the back of the said Writ, notice is to be given in writing of the Names and Additions of the Bail, the time when, and the Judge before whom the same is intended to be put in, to the Plaintiff or his Attorney, or him that caused the plaint to be entred, or if none can be found, then notice of the premisses to be left in writing with the Chief Clerk of the inferior Court, or his Deputy by the party that tenders the Bail or his Attorney, and

Oath

(a) *Trin. 27 Car. II. reg. 5.* Now Judgments are signed any time in the Vacation. (b) *Viz. the foregoing Rules.* (c) This is the antient Form, but altered by the *Stat. 2 Geo. II. cap. 32.* and thereby a new Form appointed, *viz. J. A. B. do swear that I will truly and honestly demean my self in the Practice of an Attorney according to the best of my Knowledge and Ability. So help me God.* (d) *Mich. 1645. Sec. 10 & 11. Mich. 1649.*

Rules and Orders in C. B. Hil. 14 & 15 Car. II.

Oath made thereof, otherwise the Bail not to be taken, and a *procedendo* granted if desired before Bail excepted. That if no Bail in such Cases be put in within eight days after the *Habeas Corpus* allowed in those Courts, when it is returnable *immediati*, a *procedendo* may be granted by any Judge of this Court if desired before Bail taken. And if Bail be taken in the absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*. And if no exception be taken within twenty days after the Bail taken, notice having been given as aforesaid, then the Bail to be delivered out to be filed.

That if Bail upon a *Habeas Corpus* be taken before a Judge at his Chamber and not disassented unto, if not filed within four days after the twenty days a *procedendo* may be granted upon Certificate that it is not filed. That in Term time the Plaintiff in the inferior Court may speed the Defendant to put in and to file his Bail by Rules given in the Bill of Pleas. And if not filed according to the Rules, upon Certificate thereof a *procedendo* to be granted.

That all Writs of *Habeas Corpus* returnable in Court be returnable at a day certain.

That upon Bail taken of Persons in Custody the Judges Clerk to deliver the Bail to the Prothonotary to be filed if assented unto. And so that end the Prothonotary's Fees to be deposited, but the Prisoner not to be discharged until the Bail be assented unto, or over-ruled in open Court.

Orl. Bridgman, } } Tbo. Tyrrell,  
Rob. Hyde, } } Sam. Browne.

Hil. 14 & 15 Car. II. 1662.

Concerning Sheriffs making Deputies and returning of Writs.

I. It is Ordered, that every Sheriff shall make and cause to be entred on Record a sufficient Deputy, to receive all manner of Writs and Process, under the pains and Penalties mentioned in the Statute in that behalf made in the 23d year of the (a) late King Henry the Sixth, which Law shall from henceforth be duly put in execution.

And it is further Ordered, that the said Sheriffs, or their sufficient Deputies, shall give their personal attendance in Westminster-hall daily in the Term-time, that so they may with the more convenience dispatch those Ser-

vices which appertain to their Offices respectively. And that no Sheriff or Sheriffs Deputy, shall deliver or make, or cause or suffer to be delivered or made, any Warrant or Warrants before the Writ or Writs be duly sued forth and delivered to the said Sheriffs or their Deputies respectively. Neither shall the said Sheriffs nor their Deputies deliver or cause or suffer to be delivered, any Blank Warrants. Nor shall any Clerk or Attorney of this Court receive or procure to be made any such Blank Warrants, upon pain of severe punishment, and Fine to be imposed upon the said Sheriffs and their Deputies, and utter expulsion of the said Clerks or Attorneys respectively offending in the Premises. (b)

Orl. Bridgman, } } Tbo. Tyrrell,  
Rob. Hyde, } } Sam. Browne.

Hil. 14 & 15 Car. II. 1662.

Concerning Attorneys suffering others to practise in their Names.

II. Whereas every Attorney of this Court, as well by his Oath and the Duty of his Place, as under divers penalties by several Acts of Parliament, (c) and former Orders of this Court being retained to be Attorney for any Person or Persons Demandant or Plaintiff, Tenant or Defendant, in any Action or Suit in this Court is bound to deliver or cause to be delivered his Warrant of Attorney to the Officer or his Deputy, ordained for the receipt and entry thereof in this Court.

And whereas by a Statute made in the third year of the Reign of our late Sovereign Lord King (d) James, it is enacted, 'That no Attorney shall permit any other to follow any Suit in his Name: And that every Attorney so doing, shall be excluded from being an Attorney for ever thereafter.' And whereas by (e) Order of this Court, 'Every Attorney of this Court ought to appear in Person upon or before the fourteenth day of Michaelmas Term, and upon or before the seventh day of every Term, upon pain of ten Shillings for the first default, twenty Shillings for the second default, and putting out of the Roll for the third default, and that the appearances should be entred with the Clerk of the Warrants, and that the Name of the Defaulters should be delivered to the Court by the Clerk of the Warrants or his Deputy, within three days after the time required

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(a) Cap. 10. Mich. 1654. Stat. 1. (b) Mich. 1654. Stat. 2. Note: The above Rule *literatim* was again in Trin. Term, 1 Jan. II. signed by the following Justices, Thomas Jones, John Charlton, Creswell Levingz, T. Street. (c) Stat. 23 H VIII. cap. 30. Trin. 34 H. VI. Stat. 4. (d) Cap. 7. (e) Mich. 1645. Stat. 1.

'for appearance.' Notwithstanding all which Laws and Orders through the disorderly practice and negligence of divers Attorneys of this Court, especially of the younger sort for want of their Attendance upon their Office of Attorney here in Court, and permitting others to practise in their Names, and neglect to deliver their Warrants of Attorney to be filed, and entred of Record, very many great Inconveniencies, Troubles and Errors have been found and arisen of late time more than formerly, to the scandal of the Court, and of the honest Attorneys practising therein, and the great prejudice and loss of many of his Majesty's good Subjects, as well Plaintiffs as Defendants, Demandants and Tenants in their Suits depending in this Court.

*For Remedy of which Mischiefs and Inconveniencies, and for avoiding of Errors for the time to come;* It is forbidden by the Justices of this Court upon pain of expulsion from this Court, that no Attorney of this Court permit any one to practise in his Name. (a)

And it is further declared and Ordered by this Court, that every Attorney of this Court do from henceforth appear in Person within the times in every Term before limited and expressed under the penalties before mentioned for their Defaults.

And that every Attorney of this Court do file his Warrant of Attorney of the Term, wherein any Exigent is awarded, Demurrer or Issue joined, or Judgment entred, or which of them shall first happen upon pain of forty Shillings for every time he offendeth, and be attainted by due examination made by the Justices of this Court, such Warrant to be filed upon or before the Essoin day of every Trinity Term, and within the space of one and twenty days next after the end of every other Term. (b)

And that no Officer of this Court do make or suffer to be made any Process or Entry in the Name of any Person not sworn an Attorney, nor entred in the Roll of Attorneys, or in the name of any Person put out of the Roll of Attorneys, either as a discontinuer or for any Misdemeanor, or by Rule of Court after notice thereof given to such Officer by the Clerk of the Warrants of this Court for the time being or his Deputy.

*And for the better effecting the due observance of this present Order,* It is lastly Ordered, that the Clerk of the Warrants of this Court for the time being or his Deputy, or the Persons appointed yearly by the Court to give Information to the Court from time to time of breaches of Orders and Miscarriages of Officers, Clerks and Attorneys in every Michaelmas Term, or oftner, if required, shall and may present to the Court from time to

time the Name and Names of every Attorney or Attorneys offending against this Order, to the intent that the Court may examine every Attorney complained against concerning any of the matters before rehearsed, and upon attainting any such Attorney upon due examination had, may inflict such punishment by Fine, Imprisonment or Expulsion, as the Case shall require, or give Directions for Informations to be exhibited against the most frequent and notorious Offenders for the greater penalties mentioned in the Statute thereof made and provided. (c)

Orl. Bridgman, } c Tho. Tyrrell,  
Rob. Hyde, } } Sam. Browne.

Hil. 14 & 15 Car. II. 1662.

Prisoners.

III. *Whereas many Persons arrested upon mean Process issuing out of this Court, and upon Plaints levied in inferior Courts, and removed to the Fleet by Habeas Corpus with those Causes returned upon them, have been detained thereupon for a long time, as well in the custody of Sheriffs and Gaolers as in the Prison of the Fleet without any Prosecution or Proceedings against them in this Court.* (d)

*Now forasmuch as every Person having cause of Action against any Prisoner in the Fleet, may have speedy Proceedings against such Prisoner; Therefore, and also to prevent unjust Vexations by long detaining of Persons in Prison there for the future;*

It is Ordered by the Justices of the Court of Common Bench this present Term of St. Hillary, That if any Person be committed to the Fleet by Habeas Corpus in this present Term, or in any other Hillary Term, or in the Vacation following this Term, or any other Hillary Term, unless the Plaintiff or Plaintiffs at whose Suit the Prisoner stands charged at the Fleet, shall bring such Prisoner to the Bar of this Court by Habeas Corpus, and declare against him within six dayes after Trinity Term begun, such Prisoner may be discharged by *Supersedeas* to be issued of course out of the Prothonotaries Office of this Court, where the Commitment of the said Prisoner with his Causes is entred, so as such Prisoner first enter his appearance by Attorney with the said Prothonotary in case of an Attachment of privilege, or of a Plain, or with the Filazer upon other Process returnable in this Court, and do bring a Certificate

(a) See Stat. 2 Geo. II. cap. 23. (b) Mich. 5 Geo. II. Hil. 2 & 3 Ja. II. Trin. 35 H. VI. Stat. 4.  
(c) The foregoing Rule was in Easter Term 2 Ja. II. again signed by the Justices, viz. Thomas Juxon, J. Chaddlon, Cresswell Levinz, J. Street. (d) See Stat. 4 & 5 W. & M. cap. 21. Easter 8 Geo. 1.

case under the Hand of the Warden or Clerk of the Fleet, that no Proceedings by *Habeas Corpus* have been had against him within the time aforesaid.

And that if any Person be committed to the Fleet in any *Easter* Term, or in the Vacation following any *Easter* Term, unless the Plaintiff or Plaintiffs bring such Prisoner to the Bar of this Court by *Habeas Corpus*, and declare against him within six days after *Michaelmas* Term begun, such Prisoner shall be discharged in manner aforesaid.

And that if any Person be committed to the Fleet in any *Trinity* Term, or in the Vacation next following any *Trinity* Term, unless the Plaintiff or Plaintiffs bring the Prisoner to the Bar of this Court by *Habeas Corpus* and declare against him before the end of *Michaelmas* Term following, such Prisoner may be discharged in manner aforesaid.

And that if any Person be committed to the Fleet in any *Michaelmas* Term, or in the Vacation following after any *Michaelmas* Term, unless the Plaintiff or Plaintiffs bring the Prisoner to the Bar of this Court by *Habeas Corpus*, and declare against him within six days after *Easter* Term begun, such Prisoner may be discharged in manner aforesaid. And the Plaintiff or Plaintiffs may declare upon such appearance entered the next Term after such appearance or *Superfedeas* granted. And the Attorney appearing for such Prisoner shall be bound to take a Declaration, and not afterwards.

And as concerning Persons arrested and remaining in the custody of any Sheriff or Gaoler upon any mean Process issuing out of this Court; It is further Ordered, that if the Plaintiff or Plaintiffs at whose Suit such Person is arrested and in custody do not remove such Prisoner by *Habeas Corpus* to the Fleet, nor the Prisoner enter appearance in manner aforesaid; such Prisoner may be discharged by *Superfedeas* in the end of the third Term after the arrest according to the course anciently used. And the Plaintiff may declare upon such appearance the Term following but not after; but if such Prisoner cause appearance to be entered for him by Attorney, and cause notice thereof to be given to the Plaintiff or his Attorney; and if Oath thereof be made in writing and filed in Court, unless the Plaintiff or Plaintiffs declare against such Prisoner in the Term next after such appearance, the Prisoner may be discharged by *Superfedeas*, so as Oath be made by the Attorney for the Defendant, that no Declaration hath been delivered or tendered to him: And the Plaintiff or Plaintiffs may declare against the Defendant the Term next after such appearance entered; but not afterwards.

And for the certainty of the practice in Proceedings to be had against Prisoners in the Fleet by virtue of the late (a) Act of Parliament; It is further Declared and Ordered by this Court, that in case any such Prisoner shall hereafter be brought to the Bar of this Court, by a Writ of *Habeas Corpus* returnable at any day certain, being before the day of appearance of the third return of any Term; and the said Prisoner name an Attorney who shall appear for him at the suit of the Plaintiff in the Action in the said Writ specified; the said Defendant be compellable to plead by the last day of the said Term, to a Declaration to be delivered to the said Attorney if the Plaintiff give a rule for him so to do.

But where any Prisoner is brought to the Bar, by such Writ returnable after the day of appearance of such third Return of any Term, the Defendant of course to have Imprisonment until the next Term following; but if such Prisoner refuse to nominate an Attorney to appear for him, then such Prisoner is to plead within eight days according to the said Act, provided that there be eight days after the return of the *Habeas Corpus* to give a Rule to be out within the Term.

And Lastly it is Ordered, that after Issue joined, ten days notice at the least exclusive of the day of such notice be given to the Defendant (being actually in the Prison of the Fleet) of the time of Trial of such Issue to be had.

Orl. Bridgman,  
Rob. Hyde,  
Tho. Tyrrell.

## Hil. 14 & 15 Car. II. 1662.

Prisoners.

IV. It is ordered by the Court, That no Bayliff nor Sheriffs Officer, shall presume to exact or take from any Person, being in his Custody by Arrest, any Warrant to acknowledge a Judgment but in the Presence of an Attorney for the Defendant; which Attorney shall then subscribe his Name thereunto: Which said Warrant shall be produced when the said Judgment shall be acknowledged. And if any Bayliff or Sheriffs Officer shall hereafter Offend or do contrarywise, he shall be severely punished for so doing.

And it is further Ordered, that no Attorney shall from henceforth acknowledge, or enter or cause to be acknowledged or entered, any Judgment by Colour of any Warrant gotten from any Defendant being under Arrest, otherwise than is aforesaid.

Hil.

(a) Stat. 13 Car. II. Cap. 2. Sec. 2.

Hil. Annis 15 & 16 Car. II.  
Regis, 1663.

Sheriffs.

*W* Hereas the King's Majesties Justices of this Court have received Information, That very many Under-Sheriffs of this (a) Kingdom and the Dominion of (b) Wales, notwithstanding several Acts of Parliament, and divers Orders of this Court to admonish them of the Duties of their Places, in conformity therunto, have neglected to have their Deputies upon Record, and to attend the Court in Term time to receive Writs and Process issuing out of and returnable in this Court, and to make and deliver due returns of the same; And also have neglected the execution of many such Writs and Process to them delivered, or having made execution of the same Process by arrest, or otherwise, have let Persons go at large, without taking Security or due Order for their Appearance. And having taking the Bodies, or seized the Lands or Goods of Persons outlawed upon Writs of Capias Utlagat. issuing out of this Court, have discharged such Persons and their Lands and Goods without Writs of Superseas for the same, or making any return to the Court, contrary to their Oaths and Duties of their Places, and expressly against the Statute thereof lately made and provided to the manifest delay of Justice, the Diminution of his Majesty's Revenue, the loss of many Mens just Debts, and the encouragement of Persons to stand in contempt of the Laws of this Realm. All which Inconveniencies and Mischiefes his Majesty's Justices being resolved to use their utmost endeavour and power to reform by examining and severely punishing all Sheriffs, and Under-Sheriffs, and their Clerks, Deputies and Bailiffs whom they shall find hereafter faulty in the Premises.

It is therefore Ordered and Declared by the said Justices of this Court, that every of the said Sheriffs before the last day of this present Term, and afterwards before the last return of the Term next after the taking of his Oath of Sheriff, shall make a Deputy on Record in this Court, according to the Statute made in the three and twentieth year of the Reign of King Henry the Sixth in that behalf; And that all Under-Sheriffs or their Deputies duly attend the Court in Term time, and that they duly execute and (c) return the Writs and Process of this Court, and take sufficient security, or certain order for appearance of all Persons by them arrested according to Law.

4

And that no Sheriff, Under Sheriff, Sheriffs Clerk, Deputy or Bailiff, nor any Steward, Bailiff of Franchise, Coroner, or their Clerk or Deputies shall set at liberty any Person taken upon any Writ of Capias Utlagat. nor discharge the Lands or Goods of any Person Outlawed by them seized upon any Writs of Capias Utlagat. without a lawful Writ of Superseas under the Seal of this Court to them delivered for such discharge, according to the late Act of Parliament in the (d) thirteenth year of his now Majesty's Reign in that behalf made and provided.

And it is further Ordered, that no such Superseas be made or issued out of this Court by any Officer, Clerk, Attorney or Minister of the same, without sufficient Bail first taken according to Law and former Orders and Usages of this Court, upon pain of incurring the severest punishment which according to Law and Justice can be inflicted upon the Offenders in any of the premises. (e)

Orl. Bridgman, } Sam. Browne,  
Tho. Tyrrell, } Jo. Archer.

De Termino Sancti Mich. apud  
Oxon. 17 Car. II. 1665.

Outlawries. Sheriffs.

*F*OR the better execution of the Process of Outlawry to be made and issued by and out of this Court, and the prevention of divers abuses by a neglect of the same; (f) It is Ordered that upon every Writ of Exigent which shall be sued forth of this Court, from and after this Term, if a Superseas be not put in thereunto at or before the return thereof, that no Superseas shall by any Sheriff or other Officer, be allowed as an appearance to any such Writ of Exigent until the Defendant shall have paid unto the Plaintiff or his Attorney, or left in the Court with one of the Prothonotaries thereof, the full and just costs of Suit as he shall have been at in the suing forth of such Writ of Exigent, to be taxed by the said Prothonotary. (g)

And that upon reverting of all and every Outlawry the party Defendant which reverseth the same shall before the reversal thereof or any Superseas made thereunto, give special Bail if the Sum of Money or Damages expressed in the Original Writ whereupon the Exigent was awarded shall amount to the Sum of twenty pounds and the Plaintiff or Plaintiffs shall require the same, and pay to the Plaintiff or Plaintiffs or his or their Attorney

(a) Stat. 23 H. 6. Cap. 10. Mich. 15 El. Stat. 4, 7. Mich. 1654. Stat. 1, 2. Hil. 14 & 15 Car. II. reg. 1.  
(b) Stat. 27 H. 8. Cap. 26. (c) Hil. 8 Geo. II. (d) Cap. 2. Stat. 2. (e) Trin. 24 Eliz. Stat. 1.  
Mich. 17 Car. II. (f) Hil. 2 Car. I. (g) Trin. 2 J. II.

duly enter or cause to be entred, Imparlances or Incipiturs in all Causes according to the ancient usage and custom of this Court, and that the want of entring an Imparlance or Incipitur in every Cause wherein Imparlances ought to be entred, be a sufficient cause for the Defendant to have a farther Imparlance of course.

And that no Attorney, Clerk, or any Minister of this Court, shall hereafter give any common Rule to plead in any Cause wherein Imparlances or Incipiturs ought to be, and are not entred upon Record in any of the Prothonotaries Remembrances, until the respective Prothonotary, in whose Office the Cause is, shall give allowance for the giving of such Rule to plead.

Attorneys.

And that the Rule of this Court made this present Term, for the prevention of all Debates and Controversies that may hereafter happen to arise between the respective Prothonotaries of this Court, concerning Attorneys that have or shall hereafter remove themselves and their Business from one Prothonotary's Office to another, may be effectual to all intents and purposes, It is farther Ordered by this Court this present Trinity Term, by and with the consent of the respective Prothonotaries of the same Court, that the said respective Prothonotaries shall permit and suffer each other respectively by themselves or their respective Clerks to search each others Doggers and Judgment Books at seasonable and convenient times, for the better discovery and prevention of such abuses in the future. And that if it shall hereafter happen that any Matter or Business be henceforward entred in any Prothonotary's Office, contrary to the said Order, that then such Prothonotary shall upon notice and request made to him, repay the Fees received for doing of such Business to such Prothonotary to whom such Fees did of right belong.

And that no Bill shall be filed against any Officer, Attorney, Clerk or Minister of this Court to be called in Court, in order to a Fore-judger, untill the said Bill be actually entred upon Record, and a Number Roll put upon the said Bill. (a)

Jo. Vaughan, } } Jo. Archer,  
Tlc. Tyrrell, } } W. Wylde.

Paschæ 24 Car. II. 1672.

An Order Concerning the Superfedeas-Office.

I. Forasmuch as by the Information of Richard Abbot, Gentleman, Officer of the Office aforesaid, the Court is given to understand and be informed, that divers Abuses are frequently committed contrary to the ancient use and custom of this Court, in deceit of the King's Majesty of his Seals, and defrauding and deceiving divers Officers thereof;

It is Ordered by the Court for prevention of such like Frauds, Deceits and evil Carriages for the future, that no Under-Sheriff, or County-Clerk, of any County within this Realm, Nor any Attorney or other Minister of this Court, shall return or cause to be returned upon any Writ of Exigi Facias issuing out of, or returnable in this Court, any false return of reddidit se, where in Truth the Defendant hath not rendred himself to the Sheriff.

And that no Clerk, Attorney, or other Minister of this Court shall enter or cause to be entred any retraxit with any Under-Sheriff, County Clerk, or other Minister aforesaid whatsoever, upon any Writ or Writs of Exigi Facias, issuing out of, and returnable in this Court untill the same retraxit be entred upon the same Roll, upon which the said Exigent is awarded of that present Term in which the same is returnable. And that no farther proceedings be in that Cause after the party, outlawed by filing a new Original or by any other means or ways whatsoever to deceive the King's Majesty of his Seals, and the aforesaid Officer of the Superfedeas Office of his just Fees, for making and signing of the Writs of Superfedeas quia improvide, to such Writs of Exigent or any other Officers of their just Fees.

And that no Under-Sheriff, or County Clerk aforesaid, or other Minister of the same Court whatsoever, from and after the end of this present Term, shall receive any Writ of Superfedeas, or allow any such Writ upon his or their Book or Books, File or Files, until the same be duly signed by the proper Officer of the said Office, and also sealed.

And lastly, It is Ordered that no Attorney, or other Minister of this Court, either for Plaintiff or Defendant, shall give or receive any Copy or Copies of Declarations founded upon any Writ of Exigi Facias, until the King's Majesty's Writ of Superfedeas be duly signed, sealed and allowed with the Sheriff, Under-Sheriff, or his lawful Deputy, of the County where the Exigent is laid.

Jo. Vaughan, } } W. Wylde,  
Jo. Archer, } } Rob. Arkyns.

Easter,



Easter, 24 Car. II. 1672.

**Appearances.**

*Whereas several irregular Attorneys retained to appear for Defendants, have contrary to the Law and usage of this Court neglected to enter appearances for such Defendants to the delay of Plaintiffs, Damage of Defendants, abuse of this Court and to the defrauding the King's Majesty of the duty of Six-pence, for every appearance given by a late Act of Parliament, entitled, An Act for laying Impositions upon proceedings in Law.*

*For remedy whereof, It is Ordered by the Justices of this Court in this present Easter Term, That every Attorney retained to appear for any Defendant to any Writ issuing out of this Court, which are made by the respective Filacers of this Court, shall from henceforth according to the course of this Court, enter the appearances of all Defendants with the proper Filacer of this Court, of the City or County from whom such Process respectively did issue where the Action is laid, and pay the said duty of Six-pence unto his Majesty, to the said Filacer, together with the said Filacer's Fee, upon the penalties in the said Act of Parliament mentioned.*

*And it is farther Ordered, that no Defendant shall be permitted to implead, amend his plea or move to change the (a) Venue in any Action until his appearance be entered as aforesaid.*

*And that no Attorney of this Court shall receive any Declaration unless an appearance be first entered with the Filacer as aforesaid under the like penalty.*

*And that no Attorney shall deliver or cause to be delivered any Declaration or Count to the Defendants or Tenants Attorney, or to any Person for him, until the appearance (to warrant such delivery) be duly entered with the proper Filacer, under the penalty to be expelled the Court.*

*And it is farther Ordered for the better discovering and punishing of Offenders against this Order, That the respective Filacers of this Court may at all convenient times freely peruse the Doggers and other Memorials of the Prothonotaries respectively of this Court, to the end that in every Term they may deliver in writing the Names of all Attorneys of this Court, who shall not have entered the appearances of such Defendants who employ them with the proper Filacer of this Court, to the Lord Chief Justice of this Court, or his Brethren (which they are hereby required diligently to do,) to the end the said*

*Justices may without remissness proceed against such as shall be found Offenders against this Order.*

*Jo. Vaughan, } { W. Wyld, }  
Jo. Archer, } { Rob. Atkins.*

Easter, 27 Car. II. 1675.

*An Order concerning the delivering of Copies of special Verdicts and Demurrers unto the Justices of this Court, in all Causes entered into the Court-Book for Argument at the Bar.*

*It is Ordered by the Court, That every Attorney of this Court towards any such Cause, shall deliver true Copies of the Record thereof to the respective Justices of this Court, by the space of one whole week at the least next before the day appointed for such Argument. Namely, The Attorney for the Plaintiff one Copy thereof to the Lord Chief Justice, and another to the Senior Judge; and the Attorney for the Defendant, like Copies to each of the other two Justices of this Court for the time being, according to the ancient course here used, under such penalty as the Court shall think fit to inflict upon the Attorney neglecting his duty therein.*

*And it is farther Ordered by the Court, That no Argument by Counsel on either side shall be heard at the Bar until Books be delivered to all the Judges.*

*Provided nevertheless, That in case the Attorney of either Party shall not deliver Books as he ought; then if the Attorney on the other side for expediting his Clients Cause will deliver Books to all the Judges, three days at the least before the Argument, Counsel shall be heard on his Client's behalf at the day appointed. And the Attorney delivering Books as aforesaid shall be imburied the Charges of delivering the two Books which ought to have been delivered by the Attorney of the adverse party, which Charges the said Attorney shall be bound to pay upon demand thereof.*

*And lastly, it is Ordered, That if the Charges of delivering the said two Books shall not be paid before Judgment shall be given in the Cause, the Charges of delivering the said Books shall be allowed upon taxing Costs; and in that case the Attorney shall not be compelled to pay the said Costs. But if no Costs*



Costs are to be taxed in the case, then the Attorney making default in delivering of Books as aforesaid, shall be compelled to pay the charges of the Copies so delivered by the Attorney of the adverse party, by Attachment or otherwise as the Court shall think fit. (a)

By the Court.

Fra. North,  
Hugh Wyndham,  
Rob. Atkyns.

## Trin. 28 Car. II. 1676.

*A Rule concerning Allowances of Writs of Error, and Nonsuits upon them.*

**F**Orasmuch as Information is given to the Lord Chief Justice of the Court of Common Pleas, that several Attorneys of the said Court, do make out execution upon Judgments, whereupon Writs of Error are brought, without giving Rules, or signing Non pros, with the Clerk of the Errors (to whom the same particularly belongs,) and doe sue out Writs of Error, and shew the same to the Plaintiffs Attorney in the Action, without bringing them to the Clerk of the Errors, or putting in of Bail before the Lord Chief Justice of the said Court, according to the several (b) Statutes in that case made.

For preventing of which irregular practices, It is Ordered by the Lord Chief Justice of the said Court, that for the future no Attorney of the said Court, do or shall make out any Executions, non obstante Brevis de Errore, untill they have had a Certificate from the Clerk of the Errors, that the Record is not removed, and a Non pros thereupon duly signed, and that all Attorneys, do forthwith bring their Writs of Error by them sued out to the Clerk of the Errors, to be allowed according to the ancient practise of the Court, or in default thereof, the Plaintiff's Attorney in the Action, is or may be at liberty to proceed to execution. (c)

Fra. North.

## Mich. 28 Car. II. 1676.

Writs of Errors.

**O**rdinatum est quod omnia brevia de Errore indilate  
**I**t is Ordered, That all Writs of Error shall without delay be delivered

deliberentur Clerico Errorum pro tempore existent. Quodque nemo tenebitur abstinere a prosecutione executionis pretextu alicujus brevis de Errore priusquam predictum breve deliberatur Clerico Errorum & in casibus ubi speciale Ballium requiritur, Nisi querens super tali brevi de Errore infra quatuor dies post deliberationem inde imponet Ballium secundum legem, & obtinebit breve de Superfedeas superinde Defendens poterit procedere ad executionem non obstante tali brevi de Errore.

Et ulterius ordinatur est quod post breve de Errore debito modo allocatur & Superfedeas superinde obtinet nulla fiet Executio pro non transcribendo Record in Bancum Regis, sine Certificatione in scriptis per Clericum Errorum, quod querens in tali brevi de Errore ecit defalci in transcribendo Record in Bancum Regis juxta Regulam Curie prius de cursu dandi.

to the Clerk of the Errors for the time being, and that no person shall be hindered from suing out Execution, under pretence of any Writ of Error, before such Writ of Error be (d) delivered to the Clerk of the Errors, and in cases where special Bail is required, unless the Plaintiff upon such Writ of Error, shall within four days after the delivery thereof put in (e) Bail according to Law, and obtain a Writ of Superfedeas thereupon, the Defendant may proceed to Execution notwithstanding such Writ of Error.

And it is further Ordered, that after the Writ of Error in due manner to be allowed, and Superfedeas thereupon obtained, no execution shall be had for not transcribing the Record into the King's Bench, without Certificate in Writing by the Clerk of the Errors, that the Plaintiff in such Writ of Error makes default in transcribing the Record into the King's Bench, according to a Rule of Court before of course given.

Fra. North, } } Rob. Atkyns,  
Hugh Wyndham, } } W. Scroggs.

## Hil. 28 & 29 Car. II. 1676.

Fines.

**W**Hereas several cautionary Rules have been, and are usually made by this Court, and directed to be left with the Officers, viz. the Custos Brevium, Clerk of the Kingsilver and Chirographer, for the staying of Fines suggested to have been acknowledged by Infants, or Feme covert without the consent of their Husbands, or Persons of non sane memorie, or otherwise disabled in Law to acknowledge the same, which Rules being numerous, and the Persons concerned therein being negligent in the renewing and continuing thereof as they

(a) The Court will refuse to hear Counsel upon the Argument, unless the Books are paid for, Mich. 6 Geo. II. reg. 3. (b) 3 Jac. I. cap. 8. 13 Car. II. cap. 2. Sec. 2. 16 & 17 Car. II. cap. 8. (c) Mich. 28 Car. II. Mich. 12 Geo. I. Mich. 6 Geo. II. reg. 6. (d) Trin. 28 Car. II. (e) Mich. 6 Geo. II. reg. 6 Mich. 12 Geo. I.

they ought to do every Term, and in length of Time the Parties disabled as aforesaid by Marriage or otherwise, having changed their Names: It becomes impossible for the said Officers duly to observe the said Rules incumbent on them for staying such Fines.

It is therefore Ordered that all Rules heretofore made for the staying of any Fine or Fines upon any such or the like suggestion or occasion as aforesaid, shall be renewed or continued, and Copies thereof left with the said respective Officers before the end of Easter Term next, or otherwise that the same be no way obligatory upon the said Officers or either of them. And that for the future all Persons making any complaint against such Fines acknowledged by Persons so disabled as aforesaid, or by any Person in the name of another, or by the like deceit, shall from Term to Term so long as they expect benefit or observance of such Rule, enter and continue the same Rule for that Term, or leave Copies thereof with the said respective Officers that the same may thereby be the better taken notice of, or in default thereof, the said Officers or any of them shall not stand farther obliged thereby.

And all Persons concerned in the obtaining or prosecuting such Rules, for the staying such Fines so levied as aforesaid, their Attorneys or Clerks are hereby enjoined every Term to search and see the Books and Entry of Fines with the Clerk of the Kingsilver, or other Officers where Entries are kept for that purpose.

In as much as it is not possible for the Officers to take that care for the stopping of such Fines and Recoveries, as by order of Court they shall be enjoined to stop, by reason of the multiplicity of old orders which are never recalled, so that they cannot know which orders are in force.

It is therefore Ordered, that for the future all manner of (a) Caveats, and orders for the stopping Fines and Recoveries be renewed every Term, or else to lose their force.

Fra. North, } } Rob. Atkins,  
Hugh Wyndham, } } Will. Scroggs.

Pasche, 29 Car. II. 1677.

Fines.

Forasmuch as it hath been represented to this Court by the Clerk of the Kingsilver of this Court, that it is not possible for him to take care of the stopping of such Fines, as by (b) order of Court he is enjoined to stop by

reason of the multitude of old orders concerning this matter, which have been granted and never recalled, so that he cannot know which orders stand in force, and which are determined.

It is therefore Ordered, that for the future all manner of Caveats and Orders for the stopping any Fines, shall be renewed every Term, and Copies thereof left with the Clerk of the Kingsilver, for which he is to demand only his ancient Fee of 3 s. and 4 d. the Term as aforesaid, and in default thereof, all Caveats that shall not be so renewed shall lose their force and be void. (c)

Fra. North, } } Rob. Atkins,  
Hugh Wyndham, } } Will. Scroggs.

Trin. 29 Car. II. 1677.

Attorneys.

I. Whereas divers Complaints have been made to this Court of the manifold Inconveniences and Mischiefs that daily happen, for that many of the Officers and Attorneys of the said Court, having publick and considerable Employments in the Law, are not admitted of any of the Inns of Court or Chancery, where if they were, they might be better known and more readily resorted to, and the better manage their Affairs, but lodge and keep their Offices in places obscure and remote from the said Inns of Court and Chancery contrary to the ancient course and usage, and to the great damage of the King's People through surprizes happening and advantages thence taken and insisted upon:

For prevention of which in time to come, It is Ordered by the Justices of this Court, that all Attorneys already admitted of this Court, (except such as dwell in London and Westminster, and the Suburbs thereof, or in the Burrough of Southwark, and the Liberty of St. Katherine near the Tower of London) shall be admitted of some of the Inns of Court or Chancery before the end of Michaelmas Term next coming, and take Chambers there if conveniently that may be done, else that they take Chambers or Lodgings in some convenient places near the said Inns, and leave word with the Butlers of such Inns where their Chambers or Habitations are, upon pain of being put out of the Roll of Attorneys. (d)

And that no Person whatsoever (except as is above excepted,) shall hereafter be sworn an Attorney of this Court, unless he be first admitted of some of the Inns aforesaid, and bring and produce in Court at the time of his being sworn, a Certificate under the Hand of

(a) Easter 29 Car. II. Feb. 1.

(b) Hil. 28 & 29 Car. II.

(c) Easter 9 Ann.

(d) Mich. 1654.

of the Treasurer or Principal of the said Inn whereof he is admitted, testifying his admission, which Certificate every Attorney so sworn shall deliver to the Clerk of the Warrants of this Court for the time being; to be by him filed before such Attorney's name shall be entered into the Roll of Attorneys of this said Court, remaining with the said Clerk of the Warrants, unto which file of Certificates the Treasurers and Principals aforesaid may from time to time resort as they shall see cause. (a)

Fra. North, } Rob. Atkins,  
Hugh Wyndham, } Will. Scroggs.

Trin. 29 Car. II. 1677.

*Records.*

II. **I**T is Ordered by this Court, that the respective Prothonotaries do take care that every Record of *Nisi prius* that is signed by them be ingrossed in a fair legible Character, and so entered on the Roll, and that at the beginning of every Pleading it be begun with a new line, and the first word thereof in a greater Character than the rest. And that in all Actions that have divers Narrs, they give notice thereof by Figures in the Margent of such Record of *Nisi prius*. And in default thereof the said Prothonotary sign not the same.

And it is likewise Ordered that Mr. Ingram that doth sign, and the respective Clerks of the Treasury of this Court that do ingross Records of *Nisi prius*, from thence do from time to time take the same care of all Records made out of the said Treasury.

And that all the Records of *Nisi prius*, that shall be ingrossed in this Court for the future, be of the exact breadth of the Rolls of this Court, and not broader or lesser.

Fra. North, } Rob. Atkins,  
Hugh Wyndham, } Will. Scroggs.

Trin. 29 Car. II. 1677.

*Attorneys.*

III. **W**hereas Complaints have been made to this Court, that divers Persons have sued out Writs of privilege and Attachments at their own Suits as Attorneys of this Court, who have either discontinued or had

their Names put out of the Roll of Attorneys remaining with the Clerk of the Warrants of this Court, or were never entered upon the Roll, and yet have prosecuted such Writs so as to free themselves from Arrests, or to force Bail where none ought to be given.

For the prevention of which Abuses, It is Ordered that the Clerk of the Warrants at the end of this and every other Term, shall certify under his Hand to the Seal-Office of this Court, the Names of all those Attorneys that have discontinued and that are forejudged the Court, and put out of the Roll, and have not filed any Warrant of Attorney, nor continued their Names upon the Roll for above four Terms past, and that hereupon for such Persons no Writ of Privilege or Attachment be sealed until they shall have a Certificate from the said Clerk of the Warrants, or have their said Writs by him signed, to testify that their Names are upon the Roll of Attorneys, for which no Fee is to be paid. (b)

And it is farther Ordered, that no Attorney at any time sworn and entered upon the Roll, shall have his privilege as a Clerk to any Prothonotary of this Court, but only as Attorney according to the ancient custom.

Fra. North, } Rob. Atkins,  
Hugh Wyndham, } Will. Scroggs.

Trin. 29 Car. II. 1677.

IV. *Regula generalis concernens Recordam de Nisi prius extra Cur. hic imposturum emanant.*

IV. *A General Rule concerning the Records of Nisi prius hereafter issuing out of this Court.*

II. **D**ecimo sexto Junii promissionem reformationis et preventionis multarum inconuenientiarum ratione negligentiae et dilationum diversorum Attorn' hujus Cur' subdit' Dom' Regis nunc contingent in non prosecutione Record' predict' pro trialibus exit' ad Affisas infra tempus opportunum post clausum Terminum prox' precedent' hujusmodi Affisas contra antiquum usum et cursum hujus Cur' Ordinatus.

II. **T**HE sixteenth of June; for the better reformation and prevention of many Inconueniencies happening to the Subjects of our Lord the King that now is, by reason of the negligence and delay of divers Attorneys of this Court, in the not suing out of the said Records for trials of Issues at the Assizes, within a convenient time after the end of the Term next preceding such Assizes, contrary to the ancient use and course of this Court, It is Ordered that the Records aforesaid

(a) Mic. 36 Car. II. Mich. 4 Ann.

(b) Trin. 9 W. III.

*dinat' est quod omnia recorda predicta extra Cur' bicemanan' erunt signat' per respectivos Prothonotar' dict' Cur' ac signat' & sigillat' per Clericum Thesaurar' vel al' personam in ea parte deputat' infra spatium trium septimanarum prox' post finem hujus Termini & infra idem spatium prox' post clausum cujuslibet Termini Sancti Hillarii & cujuslibet Termini Sanctae Trinitatis in futur'. Et non postea nisi pro rationabili causa special' Warrant' proinde obtentum fuerit.*

*Per Cur'.*

aforesaid issuing out of this Court, shall be signed by the respective Prothonotaries of the said Court, and signed and sealed by the Clerk of the Treasury, or other Person deputed in that behalf, within the space of three Weeks next after the end of this Term, and within the same space next after the end of every Term of St. Hillary, and of every Term of the Holy Trinity for the future, and not afterwards, unless for a reasonable Cause a special Warrant shall be obtained for that purpose.

*By the Court.*

*Fra. North, } } Rob. Atkyns,  
Hugh Wyndham, } } Will. Scroggs.*

Trin. 29 Car. II. 1677.

**V. A Rule for the better observation of a late Act of Parliament made concerning Judgments.**

**Judgments.**

*Whereas by an (a) Act of this present Parliament, it is enacted, 'That from and after the four and twentieth day of June next every Judge or Officer of this Court, that shall sign any Judgment, shall at the signing of the same, (without Fee for doing the same,) set down the day of the Month and Year of his so doing, upon the Paper Book which he shall so sign, the which day of the Month and Year shall be also entered upon the Margent of the Roll of the Record where such Judgment shall be entered'. Now to the end the same may be duly and justly done, in pursuance of the said Act, It is Ordered by this Court, that the respective Attorneys and Clerks of this Court that shall procure any Judgment to be so signed as aforesaid, (after the said 24th. day of June,) shall at the bringing in of their Rolls to the respective Prothonotary, at the same time whereon such Judgments are entered, produce the respective Paper Books whereon such Judgments are signed, that so the respective (b) Prothonotary may better exa-*

mine the respective days, entred on the Margent of the Roll of each particular Judgment, that they do agree with the respective days, signed by such Prothonotary on the respective Paper Books.

**Rolls.**

*And to the end that the said respective Prothonotaries may the better perform their duty herein, It is further Ordered by this Court, that every Attorney and Clerk that shall make such Entries, shall bring in their respective Rolls to the respective Prothonotaries in manner and form following, that is to say, the Rolls of every Trinity Term in every Year, at or before the Feast day of St. Michael the Archangel, then next following, and the respective Rolls of every Michaelmas Term, in every year at or before the Feast day of St. Thomas the Apostle then next likewise following, and also the respective Rolls of every Hillary Term in every year, at or before the Feast day of the Annunciation of our Lady the Virgin, then next likewise following, and also the respective Rolls of every Easter Term in every Year, at or before the first day of every Trinity Term in every Year, then next likewise following, under such Pains and Punishments upon every Default made by any Attorney or Clerk of this Court, as this Court shall think fit to inflict on such Defaulters. (c)*

**Judgments.**

*And it is farther Ordered, that upon the signing of all Judgments, by the respective Prothonotaries of this Court, upon Festas, Writs of Inquiry, special Verdicts, Demurrers, Nul tiel Records, Relicta Verificazione, and such like Judgments, the same shall be delivered over forthwith after such signing to the respective (d) Clerks of the Judgments in each Office, that so the respective days, being the time when such Judgments are signed, may be drawn up in the respective Judgment Papers in each Prothonotaries Office, that so the same may be entred on the Margent of the Roll of every such Record, where such Judgment is entred.*

*And it is farther Ordered, that the respective Prothonotary shall not sign any Judgment by such Confession, either by non sum inform' or nihil dic' unless the same be brought to be (e) signed within 20 days after the respective ends of every Trinity, Michaelmas or Hillary Terms in every year respectively, and at or before the first day of every Trinity Term in every Year, unless such Attorney or Clerk do produce before such Prothonotary a Warrant, or Warrants of Attorney, that do bear date after the end of every such Term, and then such Judgments on such Warrants so produced, may be signed at or before the Es-*

*foin*

(a) 29 Car. II. cap. 3. (b) Mich. 6 Geo. II. reg. 3. (c) Mich. 1654. sess. 7. East. 34 Car. II. reg. 3. Easter 5 W. & M. reg. 2. Mich. 2 Geo. I. (d) Trin. 13 Geo. II. reg. 2. (e) Judgments are now signed at any time in the Vacation.

foin day of every succeeding Term in every year, and not after. (a)

Fra. North, } } Rob. Atkins,  
Hugb Wyndham, } } Will. Scroggs.

Mich. 29 Car. II. 1677.

Recoveries.

*Through the great Complaints that have been made to this Court, of the neglects of Attorneys and Clerks, to file the Writs and Warrants of Attorney, whereupon common Recoveries have been suffered, and of the Mischiefs that have thereupon happened;*

*And for the prevention of such Mischiefs and Dangers in time to come, It is Ordered, as well by the consent of the Custos Brevium, as of the Prothonotaries and Clerk of the Warrants of this Court, that at all times hereafter when the said Prothonotaries shall examine, and sign the Exemplifications of such Recoveries, they in their respective Offices do then cause all the said Writs, being sealed and duly returned, and all Warrants of Attorney thereupon taken without Writ to be left in their Hands to be filed with the usual Fees for filing the same, without post Terminums.*

*And that the said Custos Brevium and Clerk of the Warrants, or their known Deputies, shall receive from the said Prothonotaries in their respective Offices, the said Writs and Warrants of Attorney, with the said Fees for filing thereof in manner following, to wit, for the said Writs and Warrants prosecuted and perfected of this present Term, and every other Term of St. Michael, in Easter Term then next following, and for the said Writs and Warrants of Attorney, of every Hillary Term, in Trinity Term next after, and for the said Writs and Warrants of Attorney, of every Easter Term, in Michaelmas Term next after, and for the said Writs and Warrants of Attorney of every Trinity Term, in Hillary Term then next following.*

*And that the said Custos Brevium, and Clerk of the Warrants, or their said Deputies, shall give Receipts under their Hand of all such Writs and Warrants, as shall be from time to time received from each of the said Prothonotaries by way of Duplicate, containing the County where the Lands lie, the Names of the Demandants, Tenants, and Vouchers, who come in by Writs of Summons; and also of the Attornies and Clerks Names, who prosecuted the said Recoveries.*

Fra. North, } } Rob. Atkins,  
Hugb Wyndham, } } Will. Scroggs.

Pasch. 30 Car. II. 1678.

*Regula pro manu Attorn' general' ad brevia de Ingressu habenda.*

*A Rule for the Attorney General's Hand to be had to Writs of Entry.*

*¶ Vicesimo quinto Aprilis, Cum super scilicet Terminis Sancti Michaelis ult' præteritis pro evitacione errorum sapissime contingen' per negligentiam Attorn' & Clericorum Curie hic in defectu debite prosecutionis & filationis brevium de Ingressu Sum' Scia & Warrant' Attorn' super quibus Cor'a Recuperat' extitissent permissa Ordinari' fuisset per Cur' ex assensu Custod' brevium Prothonotariorum & Clerici Warrant' hujus Cur' quod quandoque Prothonotarii predicti in eorum Officiis respective examinerent & signarent aliquod Recuperat' per Curiam hic exemplificat' iidem Prothonotarii viderent quod Brevia & Warrant' predicti debite execut' & retornat' & in eorum Prothonotar' manibus respective relist' essent cum usual' feodis pro assilacione eorund' Jam ex querela Willielmi Jones Militis Attorn' Dom' Regis generalis Justic' Cur' hic fact' quod quidam Attorn' & Clerici ejusdem Cur' brevibus suis de Ingressu per ipsum Attorn' generalem sub manu sua signand' ut officio suo pertinet juxta Antiquum Cursum inferre neglexissent in defraudatione ipsius Attorn' general' de feodis suis in ea parte.*

*Ordinat' est quod Prothonotar' predicti de futuro super examinatione,*

*¶ THE 25th. April, Whereas lately, to wit, in the Term of St. Michael last past, for the avoiding of Errors oftentimes happening by the negligence of Attorneys and Clerks of the Court here, for want of due Prosecution and filing of Writs of Entry, Summons, Seisin and Warrants of Attorney, upon which common Recoveries are suffered, It was Ordered by the Court, by the Assent of the Custos Brevium, Prothonotaries, and Clerk of the Warrants of this Court, That whensoever the said Prothonotaries in their Offices respectively, should examine and sign any Recovery by the Court here exemplified, the said Prothonotaries should see that the Writs and Warrants aforesaid should be duly executed and returned, and left in the Hands of those Prothonotaries respectively, with the usual Fees for the filing of the same. Now upon Complaint of Sir William Jones, Attorney General of our Lord the King, to the Justices of this Court made, that certain Attorneys and Clerks of this Court have neglected to bring their Writs of Entry to be signed by him the said Attorney General under his Hand, as belongs to his Office according to the ancient Course, in Fraud of the said Attorney General of his Fees in that behalf.*

*It is Ordered that the said Prothonotaries for the future, on Examination and*

*tione & sign' tal' Recuperat' curam h' eant, quod quodlibet tale breve de ingressu signat' sit per dict' Attorn' generalem, Alii. iidem Prothonotarii ad signand' tales exemplificationes totaliter abstineant quousque breve inde ita signat' fuit, & dict' Attorn' general' desideratur quod ipsa brevicia predicta pro manu sua habenda sibi deliberat' sine dilatione signare voluerit.*

*Per Cur'*

*Fra. North, } } Rob. Atkyns;  
Hugh Wyndham, } } Will. Scroggs.*

and Signing of such Recoveries, shall take care that every such Writ of Entry be signed by the said Attorney General, otherwise the said Prothonotaries shall not sign such Exemplifications until the Writ thereof shall be so signed, and the said Attorney General is desired to sign without delay the said Writs delivered to him for his Hand to them. (a)

*By the Court.*

## Mich. 30 Car. II. 1678.

### Original Writs.

*Whereas Attorneys of late have used to sue forth Original Writs in Trespass, and thereupon have taken out Process of Capias, Alias, and Pluries, &c. and afterwards declared and proceeded to Judgment in Debt, Covenant, Ejectment, &c. without suing forth any new Original, to warrant such Declarations and Judgments, contrary to Law, and in Wrong and Fraud of the Great Seal of England, his Majesty's Fines upon Originals and the Law duty;*

*It is hereby ordered, that for the future, no Attorney for the Plaintiff shall presume to deliver, or Attorney for the Defendant to receive by himself or his Agents, any Declaration, without an Original proper to the Cause of Action first sued forth to warrant the same.*

*Fra. North, } } Rob. Atkyns.  
Hugh Wyndham, } } B. Bertie.*

## Trin. 32 Car. II. 1680.

*Regula generalis quoad Narrationes in ejectione firme in London & in Com' Midd'.*

*A General Rule as to Declarations in Ejection in London and the County of Middlesex.*

*ff. Vicesimo primo Junii Ordinatus est quod Queren' vel cor' Attorn' sive partes quæ deliberari fac' Narrationes in placito predicto in dict' Com' Midd' & Lond, super tali deliberatione inde denunciabunt tenen' in possessione tenent' in questione respective quod ipsi compareant per Attorn' Cur' hic in defensione tituli inde initio prox' Termini prox' post deliberation' Narr' ill' fact'*

*Et ulterius Ordinatus est quod queren' predicti de cetero nil capient per Motionem in Cur' hic sitnd' ad iudicium versus casualem ejectorem pro defectu comparencie habend. Nisi huiusmodi motio fiat infra unam septimanam prox' post primum diem cuiuslibet Termini sancti Mich. Et cuiuslibet Termini Pasche. et infra quatuor dies prox' post primum diem cuiuslibet Termini sancti Hil. & cuiuslibet Termini sanctæ Trin.*

*Per Cur'*

*ff. ON the 21st. June It is Ordered that the Plaintiffs or their Attornies, or the Parties which cause Declaration to be delivered in the Plea aforesaid in the said County of Middlesex and London, upon such Delivery thereof, shall tell the Tenants in Possession of the Tenements in Question respectively, that they are to appear by an Attorney of this Court in Defence of the Title thereof, in the (b) beginning of the Term next after the Delivery of such Declaration.*

*And it is further Ordered, that the aforesaid Plaintiffs for the future shall take nothing by Motion made in this Court for Judgment against the casual Ejector for Default of Appearance, unless such Motion be made within one Week (c) next after the first day of every Michaelmas Term, and of every Easter Term, and within four days next after the first day of every Hillary Term and of every Trinity Term.*

*By the Court.*

N

Trin.

(a) Easter, 34 reg. 2. (b) Uncertain. See *Thredder versus Traviss ante. Ante, Positive v. Negative.*

(c) This does not extend to Ejectments where the Possession is vacant.

Trin. 33 Car. II. 1681.

*Generalis regula pro Custagiis super prosecutione ad utlagar'.*

*A General Rule for Costs upon a Prosecution to an Outlawry.*

**V**icesimo secundo Junii Ordinatus est quod quilibet Defendens qui in vel post mensem Sancti Michaelis proximi fut' utlagat' fuit, Ac qui comparere non potest & utlagat' reversari faciat super reversione illa solvet pro custagiis querens aliquam denariis Summam excedens usual' custagia de Exigend' in ista Cur' una cum suis Domino Regi super brevi originali si quis solus fuit. Et quod omnia ulteriora Custagia respectuanti usque tempus signandi Judicium pro Querens.

Et ulterius Ordinatus est quod quilibet Defendens sic utlagat' & utlagat' illam reversari faciens si Querens super inde non protestat' infra duos Terminos prox' post notitiam reversionis inde, habebit Custagia per Prothonotarium taxand'.

Per Cur'.

**T**HE 22d. of June, It is Ordered that no Defendant, who in or after the Month of St. Michael next coming shall be Outlawed, and who shall appear and reverse the Outlawry, shall upon such Reversal pay for Costs to the Plaintiff any Sum of Money, exceeding the usual Costs of the Exigent in this Court, together with the Fine to our Lord the King, upon the Original Writ, if any was paid, and that all further Costs shall be respited, until the time of signing Judgment for the Plaintiff. (a)

And it is further Ordered that every Defendant so Outlawed and reversing such Outlawry, if the Plaintiff shall not proceed thereupon, within two Terms next after notice of the Reversal thereof, shall have Costs to be taxed by the Prothonotary.

By the Court

mo die prox' Termini prox' post veredictum præd' Sic reddit' per Clericum Assisat' re-tornat' deliberetur in banc Cur' ad manus Prothonotarii in cujus Officio causa existit & minime parti prosequen' & quod judicium super inde intretur de Recordo ita quod pars illa penali-tat' quæ Domino Regi pertinet debite levare possit.

Et ulterius Ordinatus est quod cum judicium intrat' fuit de Recordo Nota sive Præcipe Recordi illius cum Numero Rotuli inde deliberetur per Clericum Judicior' Clerico Warrant' hujus Cur' ut summa sive finis ille Domino Regi sic pertineat per ipsum Clericum Warrant' inter al' in Sum' dicti Domini Regis debite extrahatur Quodque idem Clericus Warrant' pro receptione talis Note sive Præcipe manum suam apponet ad papirum Clerici Judicior' pro Judicio præd' intrand'.

Per Cur'.

been given, the Postes returned by the Clerk of the Assizes the first day of the next Term next after such Verdict so given, shall be delivered into this Court into the Hands of the Prothonotary in whose Office the Cause is, and not to the Prosecutor, and that Judgment thereupon shall be entered on Record, so that that Part of the Penalty which belongs to our Lord the King may be duly levied.

And it is further Ordered, that when Judgment hath been entered of Record, a Note or Precipe of that Record with the Number of the Roll thereof shall be delivered by the Clerk of the Judgments, to the Clerk of the Warrants of this Court, that the Sum or Fine which to the said Lord the King so belongs, by the Clerk of the Warrants amongst others, in the Sum of our said Lord the King may be duly extracted, and that the Clerk of the Warrants for the Receipt of such Note or Precipe, shall put his Hand to the Paper of the Clerk of the Judgments, for entering the Judgment aforesaid.

By the Court.

Easter, 34 Car. II. 1682.

Pasche, 34 Car. II.

*I. Regula generalis de Statuto penali.*

*I. A General Rule concerning a penal Statute.*

**S**exto Maii Ordinatus est quod quandocunque actio per aliquem qui tam, &c. pro Domino Rege super aliquo statuto penali prosecut' & triata fuit & ubi veredictum pro Domino Rege reddit' fuit le postea pri-

4

**T**HE 6th of May It is Ordered, that whensoever an Action by any Qui tam for our Lord the King, &c. upon any penal Statute hath been prosecuted and tried, and where a Verdict for our Lord the King hath

*II. Regula pro manu Attorn' general' ad Brevia de Ingressu habend'.*

*II. A Rule for the Attorney General's Hand to be had to Writs of Entry.*

**D**ecimo tertio Maii Super querimonia Roberti Sawyer Militis Attorn' Domini Regis generalis Justic' Cur' hic fact' quod quamplurima Brevia de Ingressu in le post quæ per ipsum ut Attorn' general'

**T**HE 13th. of May, Upon Complaint of Sir Robert Sawyer, Ks. the King's Attorney General, made to the Justices of this Court, that many Writs of Entry in le post, which by him as Attorney General under his Hand ought to be signed, have been hitherto pro-

(a) Except, where the Extent is returnable in the Exchequer, Trin. 2 Ja. II.

general' sub manu sua  
signari debent per di-  
versas Attorn' & Cle-  
ricos hujus Cur' adhuc  
prolocat sunt. Et si  
de manu ipsius Attorn'  
generalis prius habet  
affiantur in defrauda-  
tione ejusdem Attorn'  
de fact' suis & con-  
tra regulam Cur' hic  
in ea parte fact', Or-  
dinat' est quod Pro-  
thonotar' hujus Cur'  
eorum habeant & qui-  
libet eorum in Officio  
suo respective videat  
cum examinavit aliquod  
Recuperat' per Breve  
de Ingressu pred' quod  
Breve illud per pred'  
Attorn' generalem sub  
manu sua signatur  
Quodque Prothonota-  
rius nullum tale Breve  
ad affiland' recipiet  
Nisi per pred' Attorn'  
ita signat' fuit.

Per Cur'

prosecuted by divers At-  
torneys and Clerks of this  
Court, and without the  
Hand of the said Attorney  
General first had, are affiled  
in Fraud of the said Attor-  
ney General of his Fees,  
and against the (a) Rule of  
Court here in that behalf  
made. It is Ordered, That  
the Prothonotaries of this  
Court take care, and that  
every one of them in his  
Office respectively see,  
when he hath examined  
any Recovery by the said  
Writ of Entry, that that  
Writ be signed by the At-  
torney General, and that  
the Prothonotary shall re-  
ceive no such Writ to be  
filed unless it hath been  
signed by the Attorney Ge-  
neral aforesaid.

By the Court.

## Easter, 34 Car. II. 1682.

Bringing in Rolls.

III. *THE* Justices of this Court taking (b)  
notice, and considering the great Mis-  
chiefs which may and do happen, by reason that  
several Attorneys and Clerks of this Court, to  
whom the Prothonotaries of this Court have  
delivered Rolls, have not in due time brought  
them back to be filed, whereby they have been in  
danger to be lost, and subject to have Judg-  
ments unduly entred upon them, to the great  
damage of Purchasers, and scandal of the  
Court.

For prevention of which Mischiefs It is  
now Ordered, that none of the Prothonota-  
ries of this Court shall hereafter deliver any  
Roll or Rolls to any such Attorney or Clerk,  
who appears to be a defaulter against this  
Order, in not bringing back his Rolls in due  
time, until they shall have brought in respec-  
tively such Roll or Rolls that they had deli-  
vered unto them;

And that it may appear in whose Custody  
all Rolls are, It is farther Ordered that for  
the future, every Attorney or Clerk that shall  
receive any Roll, either Plea or Common from  
the respective Prothonotaries of this Court,  
shall sign and set his own Hand to such  
Prothonotaries Book, from whom they shall  
receive the same, for the receipt of such

Roll or Rolls, and that no Prothonotary do de-  
liver any Rolls to any other, but to the proper  
Hands of some known Attorney or Clerk of  
their respective Offices.

And it is farther Ordered, that the said re-  
spective Prothonotaries of this Court, do and  
shall the first day of every Term for the fu-  
ture take an account of what Rolls are want-  
ing, of the precedent Term in their respec-  
tive Offices, and shall respectively render an  
account thereof to this Court, the second day  
of the succeeding Term, that so the Court  
may take order for the bringing them in.

And it is farther Ordered, that every At-  
torney and Clerk of this Court that shall re-  
ceive any Roll or Rolls as aforesaid, Plea or  
Common of this or any other *Easter* Term  
for the future, shall bring in the same to the  
Office from whence he received the same,  
at or before the first day of the next *Trinity*  
Term, and that the Rolls received of any  
*Trinity* Term for the future, shall be brought  
into such Office, at or before the Feast day of  
St. Michael the Archangel next ensuing the  
said Term yearly; and that Rolls received  
of any *Michaelmas* Term, for the future,  
shall be brought into such Office at or before  
the sixth day of *January* next after the said  
Term yearly. And that the Rolls received  
of any *Hilary* Term for the future, shall be  
brought into such Office, by the space of four  
days before the Feast of *Easter* next, after the  
said Term yearly. (c)

And it is further Ordered by this Court,  
that the Clerk of the Essoyns for the future  
shall not presume to deliver any post Rolls, or  
other Rolls of this Court, to any Attorney or  
Clerk of this Court, but to the respective Pro-  
thonotaries, and other Officers of this Court,  
that have a right to such Rolls.

And if any Attorney or Clerk of this Court  
shall at any time for the future presume to  
carry any of the Rolls of this Court into the  
Country after they have been delivered to  
them by the respective Officers, to enter  
Causes there, contrary to the ancient Rules  
and Orders of this Court, this Court doth de-  
clare, that they will cause all the Penalties to  
be inflicted on such Persons as shall act to the  
contrary, and upon notice of such Offenders,  
the Court will farther proceed against them  
as Contemnners of the Rules of this Court.

Fra. North, } } Job Charlton,  
Hugh Wyndham, } } Creswell Levinz.

Mich.

(a) *Easter*, 30 Car. II.  
& M. reg. 2. Mich. 2 Geo. I.

(b) Mich. 1654. Feb. 7. Trin. 29 Car. II. reg. 5.

(c) *East*. 5 W.



Mich. 36 Car. II. 1684.

De Termino Sancti Michaelis Anno Regni Domini Caroli Secundi nunc Regis Angliæ, &c. tricesimo sexto.

*Concerning the Admittance of Attorneys of some of the Inns of Court or Chancery.*

*Whereas divers Complaints have been made to this Court, that manifold Inconveniencies daily happen for that many Clerks and Attorneys of this Court have not been admitted of any of the Inns of Court or Chancery; which, if they were, they might be better known and more readily resorted to, whereby Business of Law might be better managed, which cannot be so easily done if Clerks and Attorneys of this Court be permitted to lodge out of the Inns of Court or Chancery, contrary to the ancient usage, and to the great damage of the King's People, through surprizes thence taken and insisted upon; and to the detriment and decay of the Societies of Law;*

For prevention of which Inconveniencies, and to establish a remedy for the future, It is Ordered by this Court, that all Clerks and Attorneys of this Court already admitted of this Court (not already admitted in some of the Inns of Court or Inns of Chancery) shall be admitted into some of the Inns of Court (if those Honourable Societies shall please to admit them) or into some of the Inns of Chancery before the end of *Hillary* Term now next ensuing, and take Chambers there (if conveniently it may be done) else that they take Lodgings in convenient places near the said Inns, and leave word with the Butlers or Porters of such Inn where their Chambers or Habitations are, upon pain of being put out of the Prothonotary's Book and the Roll of Attorneys, except such Persons who are and shall be hereafter House-keepers in *London, Westminster, Southwark*, or the Suburbs thereof, and the Liberty of the *Tower of London*, and *St. Katherine's* there, and such who are sworn Attorneys of any Courts within the said Cities, Town and Liberties; and that no Person whatsoever shall hereafter be admitted or sworn a Clerk and Attorney of this Court, unless he be first admitted of some of the Inns aforesaid, and bring and produce at the time of his being admitted or sworn, a Certificate under the Hand of the Treasurer or Principal of the said Inn whereof he is admitted (without paying any thing for the same) testifying his admission; which Certificate every Clerk so to be admitted shall deliver to the Prothonotary, in whose Office he shall be so admitted, to be by him filed before such

1

Clerk's Name be entered into the Prothonotary's Book, by him kept for that purpose; and every Attorney so sworn such Certificate shall deliver to the Clerk of the Warrants of this Court for the time being, to be by him filed before such Attorney's Name be entered into the Roll of Attorneys of the said Court remaining with the said Clerk of the Warrants, unto which File of Certificates the Treasurers and Principals may from time to time resort, as they shall see cause.

And it is further Ordered by this Court, that in case any Clerk or Attorney of this Court already admitted, or hereafter to be admitted into one of the Societies aforesaid, do put himself out of the said Society whereof he stands admitted, that then he shall within one Term after he shall so put himself out of the said Society admit himself into another of the said Societies.

And in case any Clerk or Attorney offend against this Rule, he is to be put out of the Prothonotaries Book or Roll of Attorneys until he give Obedience unto the same; and the Prothonotaries and Secondaries, and all other Officers whom it may concern, are required to give obedience to this Order, and to see that the same (as to themselves) be duly observed. (a)

*Tho. Jones,* } } *Creswell Levinz,*  
*J. Charlton,* } } *J. Street.*

## RULES and ORDERS

### OF THE

### Court of Common Pleas.

De Termino Pasch. Anno Regni Regis Jacobi Secundi primo, 1685.

*An Order Concerning Attorneys suffering others to practise in their Names.*

Signed by } *Tho. Jones,*  
                  } *J. Charlton,*  
                  } *Cresw. Levinz,*  
                  } *J. Street.*

*This Order being the same with that made Hil. 14 & 15 Car. II. reg. 2. is therefore omitted, nor is it now to be found among the Rules hung up in the Treasury.*

Easter,

(a) Mich. 1654. *sec. 1.* Trin. 1677. Mich. 1705.

Easter, 1 Ja. II. 1685.

m. Pasch. anno primo Jac. II. Regis.

recipiatur.

Whereas great Inconveniencies have often happened by reason of the late entry of Causes in the Marshals Book to be tried in London and Middlesex, before the Lord Justice of his Majesty's Court of Common Pleas, and the uncertainty of entering recipiatur; is therefore Ordered by the Lord Justice of his said Majesty's Court of Common Pleas, that all Attorneys of the Court, that shall have any Records of *prius* to be tried before his Lordship in Guild-hall, London, or at Westminster-hall, enter the same in the Marshals Book, days at the least exclusive, before the day of trial, according to the antient course, or default thereof, a *Ne recipiatur* may be made. (a)

Tho. Jones.

Termino Sanctæ Trinitatis Anno Regni Regis Jacobi secundi primo, 1685.

Order Concerning Sheriffs making Deputies and returning of Writs.

Signed by { Tho. Jones,  
J. Charlton,  
Cresw. Levinz,  
T. Street.

This Rule being the same Verbatim as the Rule made 14 & 15 Car. II. is therefore omitted.

Easter, 2 Jac. II. 1686.

Termino Pasch. Anno secundo Jacobi secundi Regis.

Concerning Clerks of Assise, and the Lord Chief Justice's Associate returning Postea's by a time limited.

HE King's Majesty's Justices of this Place, taking notice that divers of his Majesty's Subjects of this Realm of England, con-

cerned in Suits depending in this Court, have of late time been very much delayed, and put to great Trouble and Charge, in attendance and otherwise, by reason that the Clerks of Assise within the respective Circuits of this Kingdom, have neglected to make returns of the Records of *Nisi prius* or *Postea*'s in this Court, at the days in bank, as the Law requires, and the ancient usage hath been; and through default of the said Clerks of Assise, the said Justices of this Court cannot be legally informed of the Matters acted at the Assises; which only can appear upon the return of the *Postea*. And therefore are enforced, very often, to defer their giving of Judgment unto further days, contrary to the good liking of the said Justices whereby the People are much prejudiced, and thereof have made many Complaints to this Court.

The said Justices being desirous to prevent the like Inconveniencies for the future, and as much as in them lieth to provide a fit remedy, do Order, That every Clerk of Assise of the respective Circuits within this Realm of England, and also the Associate to the Lord Chief Justice of this Court, shall make returns of all *Posteas* upon all Records issuing out of this Court, whereupon any Proceedings have been, by virtue of any Writ of *Nisi prius*, *Distringas*, *Habeas Corpora Jur*, and shall cause the same to be delivered to the respective Prothonotaries of this Court, upon the *quarto die post*, of the return of the Writ of *Nisi prius* in Bank, upon pain of forfeiting the sum of twenty Pounds, to be estreated into the King's Majesty's Court of Exchequer.

And that all pretence of excuse may be taken away, and due observation of this Order may be had and made, It is further Ordered by the said Justices of this Court, that the respective Clerk of Assise in the respective Circuits, and also the said Associate in London and Middlesex, at the Trial of every Cause by Record of *Nisi prius* issuing out of this Court, shall take the Fees due unto them respectively, for the return of every such *Postea*.

Hen. Bedingfield, } 5 Ed. Lurayche,  
T. Street, } 2 John Powell.

Trin. 2 Jac. II. 1686.

De Termino Sanctæ Trinitatis Anno Regni Regis Jacobi secundi secundo.

Reversing Outlawries.

Whereas upon Complaint made unto this Court by Sir Robert Sawyer, Kt. his Majesty's Attorney General, that several Defendants

(a) Hil. 8 Geo. I. reg. 2. ante, May v. Annis.

Defendants for not appearing upon the Exigent being returned Outlawed continue in Contempt till after the Death of the Plaintiff, and before such time as the Executor or Administrator of the Plaintiff could have knowledge, or before the Will proved or Letters of Administration granted, such Defendants privately without special Bail, and contrary to several particular Orders of this Court heretofore in that behalf made, have reversed the said Outlawries to the prejudice of the King's Interest, though the Defendants, by reason of the Plaintiff's Death, are not less in Contempt than before, nor the Outlawry in the least to abate by reason thereof.

Now for the prevention of the like Mischief, It is Ordered, that no Outlawry for the future after the Death of the Plaintiff in the Action be reversed without the Defendant's appearance and putting in special Bail, (if the Action so requires) to the Executor or Administrator of the Plaintiff or to the Husband and Wife in case where the Wife, whilst a feme sole sued the Defendant to an Outlawry before Marriage.

Provided that the Plaintiffs Attorney to the Writ of Exigent or *Capias Utlagatum* do within fourteen days after notice to him given of the Defendant's intention to reverse such Outlawry (a) (deliver) the Name or Names of the Executor or Administrator of such Plaintiff or Plaintiffs deceased to the proper Prothonotary of this Court.

And for the better execution of the Process of Outlawry to be made and issued by and out of this Court, and the prevention of divers Abuses by neglect of the same, and for the better regulating of the reversal of Outlawries.

It is ordered, That upon every Writ of Exigent which shall be sued forth of this Court from and after this Term, if a *Superfedeas* be not put in thereunto, at or before the day of appearance thereof, that no *Superfedeas* shall by any Sheriff be allowed to any such Writ until the Defendant shall have paid unto the Plaintiff or his Attorney, or left in the Court with one of the Prothonotaries thereof the full and just Costs of Suit therein.

And that upon reversing all and every Outlawry the party Defendant which reverseth the same shall before the reversal thereof, or any *Superfedeas* made thereunto, give special (b) Bail if the Sum of Money or Damages expressed in the Original whereupon the Exigent was awarded shall amount to the Sum of ten pounds or upward, and pay to the Plaintiff or his Attorney, or leave in the Court for him or them the full and just Costs of Suit to the Exigent as aforesaid.

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And where the Plaintiff by virtue of such Outlawry hath taken an Inquisition, and extended into the King's Hands the Goods, Chattels, Lands or Tenements of the Outlawed Person, and returned the same into the Exchequer, such further just and reasonable Costs (c) shall then be taxed by the Prothonotary, and likewise paid to the Plaintiff or his Attorney, or left in Court for him or them as the Plaintiff hath been at in taking and prosecuting the said Inquisition before any Certificate of such reversal shall be made by the Clerk of the Outlawries in that behalf.

And for the prevention of the great and common Abuse by Sheriffs Officers and Bailiffs for (d) enlarging of Persons arrested upon *Capias Utlagatum* before Judgment without a lawful *Superfedeas* in that behalf first delivered unto him or them, that upon Affidavit thereof made and filed every Person offending therein shall pay the sum of Forty Shillings to the party grieved, who shall have an Attachment of course against such Sheriff, Officer, Bailiff, or party offending for payment of the same, and the party or parties so offending shall likewise undergo such other punishment as by the Court shall be thought fit.

Henry Bedingsfield, }  
T. Street, } { Ed. Lutwyche,  
 } { Job. Powell.

Hil. 2 & 3 Ja. II. 1686.

De Termino Sancti Hillarii Anno Regni Domini Jacobi secundi Regis secundo & tertio.

Warrants of Attorney.

Whereas by the ancient practice of this Court it hath been used and not only provided by several (e) Acts of Parliament in that case made under great penalties, but also by several Orders of this Court pursuant thereunto that every Attorney as well for the Plaintiff as Defendant in any Action, Suit or Plea in this Court depending should deliver his Warrants of Attorney in every such Action, Suit or Plea wherein he is named Attorney, to be entered and filed on Record with the proper Officer appointed to receive and file the same; notwithstanding which ancient Practice, Statutes and Orders, many Attorneys not regarding their Oaths, nor fearing the penalties in the said Statutes and Orders provided, do neglect to file their Warrants of Attorney, especially upon Issues joined and Process to the Outlawry;

F. r.

(a) (Deliver is not in the Rule.)

(b) Mich. 12 Geo. I. Hil. 2<sup>d</sup> Car. I. Trin. 24 Eliz.

(c) Trin.

33 Car. II. Trin. 1<sup>st</sup> W. & M.

(d) Mi. 1654. Stat. 9.

Hil. 15 & 16 Car. II. Mich. 1<sup>st</sup> Car. II.

(e) Stat. 32 H. 8. c. 30—18 El. c. 14.

For remedy whereof It is further Ordered by the Lord Chief Justice, and other the Justices of this Court, that from henceforth every Plaintiff's Attorney who shall prosecute any Cause to Issue, shall upon the delivery of the Copy of such Issue receive of the Defendant's Attorney the Fee for the filing his Warrant therein, and in case the Defendant's Attorney shall refuse to pay the Plaintiff's Attorney for the same, that the Plaintiff's Attorney shall sign Judgment in like case, as if the Defendant's Attorney had refused to pay for the Copy of the Issue or Entry of his Plea, which said Plaintiff's Attorney shall file as well the Defendant's as Plaintiff's Warrant of Attorney before his making up his Record therein.

And to the end this Order may be the more effectually observed, It is further Ordered, that the Clerk of the Treasury for the time being shall not for the future sign or seal any Record of *Nisi prius*, unless the same be first signed or stamped by the Clerk of the Warrants or his Deputy, to the end it may thereby appear that the Warrants of Attorney are duly filed.

And it is likewise Ordered, that no Exigent shall receive any *Pluries Capias* in order to make an Exigent or Proclamation thereon before the same be signed or stamped by the said Clerk of the Warrants or his Deputy, to the end it may likewise thereby appear that the Warrants of Attorney therein are duly filed.

And for the more easy dispatch of Business, It is further Ordered, that the Clerk of the Warrants by his Deputy or other Clerk attend at the Treasury Chamber where the Records of *Nisi prius* are sealed, three Weeks after every Issuable Term, or so long as Records are sealed without a Judge's Warrant, there to receive and take the said Warrants of Attorney.

Hen. Bedingsfield, } } Ed. Luttrelyche.  
T. Street, } } Joh. Powell.

## RULES and ORDERS OF THE Court of Common Pleas.

Trin. 1 W. & M. 1689.

An Order upon Outlawries transcribed into  
the Court of Exchequer.

WHERE any Outlawry shall be transcribed into this Court and Process made out thereupon, and afterwards such Outlawry shall be reversed before any Judgment shall be entered for removing the King's Hands, and the Party Outlawed restored to his Possession, the Prosecutor of such Outlawry shall be paid such Costs as shall be taxed by their Majesty's Remembrancer or his Deputy for the Proceedings in this Court. (a)

Lune xiii Maii 1689.

It is this day Ordered by the Court that the Rule abovementioned sh. ll be made an order of this Court, and that the same shall be entered amongst the Orders and Rules of this Court.

R. Atkins, } } N. Lechmere,  
Ed. Nevill, } } Jo. Furton.

Trin. 1 W. & M. 1689.

De Termino Sanctæ Trinitatis Anno primo  
Gulielmi & Mariæ.

Bail. Filacer.  
II. *W*HEREAS very many Mischiefs and Inconveniencies do arise unto the Plaintiffs in Causes depending in this Court whose chief design in bringing their Actions is many times to get good Bail thereunto, and thereby to secure their Debts, It is Ordered, this present Trinity Term, that the Defendant or their Attorneys who shall hereafter put in any Bail to any *Capias ad respondend.* or other Filacer's Writ, shall duly have recourse to the proper Filacer, in whose Office such Bail ought to be

be entred, and shall with him or his Clerk either come into this Court, or with him or his Clerk attend one of the Judges thereof to take the same; and in case any Filacers Bail shall be taken contrary to this Order (except it be taken in the Circuit, which if delivered to the proper Filacer by the first day of the succeeding Term, that so he may have time to enter it upon Record, shall be as good as such as are taken, as is above ordered) this Court will punish such Contempt. And in order to make the Attorney for the Defendant vigilant in his Client's Business this Court doth further declare, that where any Filacer's Bail is taken without the (a) proper Filacer it is as no Bail, the Plaintiff is at Liberty to proceed on the Sheriff's Bond as if no such Bail were ever put in; and that before the Defendant shall be admitted to plead to the original Action he shall pay full Costs to the Plaintiff.

Hen. Pollexfen, } } Tho. Rokeby,  
John Powell, } } P. Ventris.

Trin. 2 W. & M. 1690.

De Termino Sanctæ Trinitatis Anno Gu-  
lielmi & Mariæ secundo.

Filacers. Sheriffs.

I. **T**O prevent the Mischiefs and Inconveniences that may attend the entering and doing Business in wrong Offices, and the Injury that must necessarily follow to the proper Officers, It is Ordered this present Trinity Term that all Rules for the Sheriff to bring in the Body of a Prisoner taken upon any Process, which hath or shall Issue, or which ought to issue out of the Office of any Filacer be for the future given by the Filacer from whom such Process issued, or ought to have issued, and by none other, whereof the Attorneys, Clerks, Under-Sheriffs of the several Counties, and all others whom it may concern are to take notice. (b)

Hen. Pollexfen, } } Tho. Rokeby,  
John Powell, } } P. Ventris.

Trin. 2 W. & M. 1690.

De Termino Sanctæ Trinitatis Anno secundo  
Willielmi & Mariæ Regis & Regina  
Angliæ, &c.

Affidavits.

II. **W**HERAS upon Examination it appears to us that divers Persons have taken upon them to take Affidavits in the Country

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(a) But see Hil. 8 Geo. II.

(b) Hil. 8 Geo. I.

(which have been filed and made use of in this Court) without being authorized thereunto as the Statute directs.

We do therefore for the preventing the like abuse for the future, Order, that the Secondaries of the several Offices shall not file any Affidavits taken before any Person that is not Commissioned to do the same; and to that end Books of the Names of all such Persons as are or shall be lawfully authorized to take Affidavits in the Country to be made use of in this Court shall be delivered to, and kept by the said Secondaries, and that no Affidavit(c) shall be read in Court before the same be filed.

Hen. Pollexfen, } } Tho. Rokeby,  
John Powell, } } P. Ventris.

10 Mar. 1692. 5th. W. & M.

Orders to be observed by Commissioners empowered by Commission, in pursuance of an (d) Act of Parliament for taking Special Bails in the Country upon Actions and Suits depending, or to be depending in their Majesties Court of Common Pleas at Westminster.

Bail.

**F**irst, It is Ordered, that before any Bail be taken by Virtue of the said Act, a true Copy of the Writ on Parchment to which the Defendant is to put in Bail, shall be brought to the Commissioner before whom such Bail is to be taken; and thereupon the Recognizance or Bail-piece shall be fairly drawn and ingrossed on the said Parchment Copy, in this or the like Form as the Case shall be, viz.

Manucaptors Johannes Denn de Blackbarnesley in the Parish of Settle in the County of York, Gent. and Richardus Fenn de eadem Gen. The Bail John Denn of Blackbarnesley in the Parish of Settle in the County of York, Gent. and Richard Fenn of the same, Gent.

A. B. At- Pars ipsa A. B. At- The Defen-  
torn' pro in xxi. torney for dant in xxi.  
Defend' Uterque the De- Each of the  
M. in xl. fendout. Bail in xl.

Capt. & cognit. de- Taken and acknowledged the 10th day of March Anno Dom. 1692. de bene in the Year of our Lord esse coram me A. B. 1692, conditionally before Un' Commissionar'. me A. B. one of the Commissioners.

If the Defendant be not present, then the Bail are usually bound in double the Sum in the Writ, otherwise only Single.

The

(c) Hil. 11 Geo. II. reg. 1. (d) 4 W. & M. cap. 4.

The Condition of which faid Recognizance fhall be to this Effect, viz.

*You* (naming the Defendant if prefent) do acknowledge to owe unto the Plaintiff xx l. And *you* (naming the Bail) do feverally acknowledge to owe unto the fame Perfon the fum of xl. apiece, to be levied upon your feveral Goods and Chattels, Lands and Tenements, upon Condition, that if the Defendant be Condemned in the faid Action, he fhall pay the Condemnation, or render himfelf a Prifoner to the Fleet for the fame; and if he fail fo to do, *You* (naming the Bail) do undertake to do it for him. (a)

Secondly, It is Ordered, That the Affidavit of the due taking of every fuch Bail fhall be made either before fome Judge of the Common Pleas, to whom the Bail fhall be transmitted; or before fome Perfon who fhall have power to take Affidavits in Matters and Caufes depending in the faid Court.

Thirdly, It is Ordered, That all Bails taken by any Commiffioner within the diftance of forty Miles from the Cities of London and Weftminfter, fhall be (b) transmitted to the Lord Chief Juftice of the Court of Common Pleas, or to one of the Juftices of the faid Court, within ten days after the taking thereof; and all Bails taken by any Commiffioner above the diftance of forty miles from the faid Cities of London and Weftminfter fhall be transmitted within twenty days after the taking thereof, unlefs all the faid Juftices fhall be in their Circuits, and then as foon as any one of them fhall be returned to London out of his Circuit.

Fourthly, Alfo every Commiffioner is to have a Book kept purpofely for entring exactly the Names of the Defendant and his Bail, and of the Plaintiff, as it is in the Bail-piece, and the time of the taking thereof, and the Name of him by whom fuch Bail fhall be transmitted.

Fifthly, It is further Ordered, That the Plaintiffs Attorney fhall be at liberty to repair to the Commiffioners Book for the Names of the Bail, to the end that they may enquire of the fufficiency of them, and if they are found infufficient, they may except againft them within twenty days after the faid Bail is transmitted, and notice to the Plaintiff or his Attorney of the taking thereof: And in that Cafe the Defendant muft either put in better Bail, or the Cognizors of fuch Bail, muft (c) juftify themfelves in open Court, either by Affidavit taken before fuch Commiffioner that took the faid Bail, or by Oath made in Court, or before one of the Judges of the faid Court.

Geo. Treby, } } John Powell,  
Ed. Nevill, } } Tho. Rokby.

Eafter, 5 W. & M. 1693.

Issues. Incipiturs.

I. *Whereas* upon Complaint made by the Prothonotaries, and the Clerk of the Treafury of this Court, on behalf of themfelves and the under Clerks of the Treafury, that many Attorneys and Clerks of this Court neglect to enter their Issues of the Term wherein they are joined, but many times enter them of fubfequent Terms, without any Warrant or Authority for the doing thereof, to the apparent Damage and Loss of the faid Clerks in defrauding them of their juft and due Fees. (d)

Now for the prevention thereof and of many other Inconveniencies and Mifchiefs frequently committed, and happening by fuch and the like neglects, It is Ordered by the Lord Chief Juftice and other his Brethren Juftices of this Court, that from henceforth all Issues be entered of the Term they are joined, and not of any other fubfequent Term whatfoever, and that the Prothonotaries of this Court fhall not give any Licence or Authority for the entry of any fuch Issues, nor fhall the Clerk of the Eftoins deliver out any Poft Rolls for the doing thereof, nor fhall the Clerk of the Treafury permit any fuch Issues to be entered in the Treafury upon any account whatfoever. (e)

And it is further Ordered, that the refpective Prothonotaries of this Court for the future, fhall not fign any Records of *Nifi prius* until the fame or an *Incipitur* thereof be fairly entered upon Record, and the Fees firft paid for the entry thereof.

Geo. Treby, } } John Powell,  
Ed. Nevill, } } Tho. Rokby.

Eafter, 5 W. & M. 1693.

Bringing in Rolls.

II. *Whereas* by an ancient Rule of this Court made in the fixth year of the Reign of King James the firft, The Rolls of Trinity, Michaelmas and Hillary Terms are to be brought in to the Clerk of the Eftoins, by the feveral Officers of this Court before the Eftoin-day of the Terms following, and the Rolls of Eaſter Term, on or before the firft day of Trinity Term following, and that Officer which doth not bring in his Rolls at the times aforeſaid is to pay to the Clerk of the Eftoins for every Roll wanting xii d. (f)

P And

(a) Trin. 24 Eliz. (b) Hil. 6 Geo. I. reg. 2. Mic. 13 Geo. I. Mich. 6 Geo. II. reg. 1. (c) Mic. 6 Geo. II. reg. 6. Trin. 3 & 4 Geo. II. (d) Mich. 1654. Jeſt. 21. Trin. 21 Car. II. reg. 2. (e) Hil. 11 Geo. I. (f) — 6 Ja. I. Eaſt. 12 Ja. I. Eaſt. 34 Car. II. reg. 3. Mich. 1654. Jeſt. 7.

And whereas by a late Act of Parliament entitled, *An (a) Act for the better discovery of Judgments in the Courts at Westminster*, The Clerk of the Effoins is to make an Alphabetical Dogget of all the Judgments entered in this Court of *Michaelmas* and *Hilary* Terms before the last day of the several Terms following; and of the Judgments of *Easter* and *Trinity* Terms before the last day of *Michaelmas* Term following under the penalty of one hundred pounds.

And whereas by reason of the late bringing in of the Rolls of late years contrary to the said Rule of Court, the Clerk of the Effoins hath not time sufficient to dogget the Judgments by the time limited in the said Act of Parliament.

It is therefore hereby Ordered by this Court that the several and respective Officers of this Court shall deliver in all their Rolls of *Trinity*, *Michaelmas* and *Hilary* Terms to the Clerk of the Effoins before the Effoin day of the several Terms following, and their Rolls of *Easter* Term on or before the first day of *Trinity* Term following; and that that Officer which shall not bring or send in all his Rolls of the said several Terms at the times aforesaid shall pay to the Clerk of the Effoins for every Roll brought in after, xii *d.* according to the ancient Rule of this Court. (b)

And whereas the Plea Rolls of this Court have not of late years been brought to the Clerk of the Effoins to be bound up at the time they ought to be; It is hereby likewise Ordered, that the Plea Rolls of every Term hereafter shall be brought in to the Clerk of the Effoins within three Weeks after the end of the Term following; and in default thereof there shall be likewise paid to the Clerk of the Effoins for every Plea Roll brought in after, 12 *d.*

Geo. Treby, } } John Powell,  
Ed. Nevill, } } Tho. Rokeby.

### The same (c) Term, 1693.

#### III. Rules to be observed in the Court of Common Pleas, in the Proceedings upon Declarations delivered to Prisoners in Custody in County Goals. (d)

1<sup>st</sup> **T**HAT no Copy of any Declaration shall be delivered to a Prisoner in Custody until after the Process, upon which

such Prisoner shall be taken or charged in Custody be returnable.

2<sup>dly</sup>, That no Rule shall be given for the Defendant in Custody, to appear and plead to any Declaration against him, until an Affidavit be filed with the proper Secondary of the Delivery of the Copy of such Declaration, and of the time when, and the Person to whom the same Copy was delivered; and a Copy of the said Affidavit shall be produced to the Prothonotary before Judgment signed, together with a Certificate from the proper Officer, that no Appearance is entered with him.

3<sup>dly</sup>, If a Copy of the Declaration be delivered, before *Mensem Pasche* or *Crastinum Animarum*, and Affidavit thereof made and filed, and the Defendant doth not enter his appearance with the proper Officer within ten days after *Easter* or *Michaelmas* Term respectively, Judgment may be entered against him upon the Certificate as aforesaid, if Rules have been given; but if he doth (e) (not) enter his appearance as aforesaid, before the end of ten days after the Term, he shall Imparl until the next Term, unless the Action be in *London* or *Middlesex*, and the Defendant be in Prison within forty miles of the City of *London* and *Westminster*; then though he doth appear before the expiration of ten days after the end of the Term, he shall plead two days before the Effoin day of the next Term, and in default thereof Rules having been given, Judgment may be entered against him as aforesaid.

4<sup>thly</sup>, If a Copy of the Declaration be delivered on, or after *Mensem Pasche* in *Easter* Term, or *Crastinum Animarum* in *Michaelmas* Term, or in *Hilary* or *Trinity* Term, and the Plaintiff thereupon shall give Rules to appear and plead, if the Defendant enter his appearance two days preceding the Effoin day of the next Term, he shall Imparl until the said next Term: But if he doth not appear within that time, Judgment may be entered against him as aforesaid.

5<sup>thly</sup>, If the Writ be returnable in one Term, and a Copy of the Declaration be delivered before the Effoin day of the next Term, the Plaintiff in such next Term may give Rules to appear and plead; and if the Defendant doth not enter his appearance, and plead by that time that the Rules are out, Judgment may be entered against him as aforesaid.

6<sup>thly</sup>, If the Declaration be not entered or left in the Office before the end of the next Term, after the Writ or Process (by which the Prisoner shall be taken or charged in Custody) be returnable, and an Affidavit made and filed in manner aforesaid, before the end of

(a) 4 & 5 W. & M. cap. 20. And 7 & 8 W. III. cap. 36. (b) Mich. 2 Geo. I. (c) In the King's Bench a like Rule was made, Easter, 5 W. & M. 1693. (d) Stat. 4 & 5 W. & M. cap. 21. See reg. Easter, 8 Geo. I. (e) (Not) is in the Original Rule, but it's certainly a Mistake of the Clerk.

of twenty days after such Term (*Easter Term* excepted, and within ten days after *Easter Term*) the Prisoner shall be discharged upon the entering of his appearance with the proper Officer, by Writ of *Superfedeas* made by him, according to the ancient practice of this Court. (a)

7thly, If any Goalor or Keeper of Prison having received a Copy of a Declaration against a Prisoner in his Custody, shall suppress the same, or not deliver it forthwith to such Prisoner, an Attachment shall be issued against him.

Geo. Treby, } } Job. Powell,  
Ed. Nevill, } } Tho. Rokeby.

## Easter, 6 W. & M. 1694.

*Termino Pasch. Anno sexto Gulielmi & Mariæ Regis & Reginae Angliæ, &c.*

### Fines.

**F**ORasmuch as Complaint hath been made unto this Court by the Secondaries of the Compters in London and the Under-Sheriff of Middlesex that many Fines have been and daily are passed through the several Offices of this Court wherein Attorneys are employed, or their Names used as Attorneys for the Conusees of the same, who neither do know nor are acquainted with the Parties in the said Fines mentioned, nor cannot or will not give any Account where the Lands and Tenements therein contained do lie, or of the Names of the Tenants in possession thereof; and others are passed by Attorneys of the Court of Kings Bench and Solicitors in the Names of some, who, although they be Attorneys of this Court live many miles distant from London, and therefore cannot be enquired of touching the Post Fines thereupon growing due unto their Majesties to be Collected and Received by the said Secondaries and Under-Sheriff, by means whereof in regard that many Purchases are made in other Persons Names in trust for the real Owners of the Estates which pass by the said Fines, and sometimes of Rents issuing out of Houses, it is very difficult, if not impossible for the said Secondaries and Under-Sheriff to find out the Messuages, Lands and Tenements whereupon the said Post Fines are to be levied, or out of what Lands and Tenements such Rents do Issue, or the Persons who of right ought to pay the same, so that many of them are wholly lost.

For Remedy thereof for the future, It is Ordered by this Court, that from henceforth no Writ or Writs of Covenant upon any

Fine or Fines whatsoever of any Messuages, Lands or Tenements, or of Rents issuing out of them, lying or being, or which shall therein be mentioned to lie or be within the City of London and the Liberties thereof, or within the said County of Middlesex, or either of them; whether the same shall be of Messuages, Lands or Tenements in the said City and County, or either of them singly, or joined, with any other Messuages, Lands or Tenements in any other City or County, shall be returned by the Clerk for the Return of the said Writs of Covenant of this Court for the time being, until the Attorneys, who shall prosecute such Fines shall give a Note or Notes in Writing to the said Clerk for the return of the said Writs of Covenant for this Court or his Deputy as well of the Persons Name and Place of Habitation who is really and properly Attorney to the said Fine or Fines as of their own Names and Places of Habitation, as also of the particular Street, Lane or Place where such Messuages, Lands or Tenements, or Rents issuing out of the same are situate; and of the Person or Persons Name or Names, who is, or are in Possession of such Messuages, Lands or Tenements, or who is, or are to pay the Post Fine or Post Fines thereupon due unto their Majesties.

And it is further Ordered, that the present Clerk for the Return of the said Writs of Covenant of this Court, or his Deputy, or the Clerk for the Return of the said Writs of Covenant of this Court for the Time being, his Deputy or Clerk, and all Attorneys of this Court, and others concerned therein shall and do take notice from time to time of the due Execution of this Order, and that the said present Clerk for the Return of the said Writs of Covenant of this Court or his Deputy, or the Clerk for the Return of the said Writs of Covenant of this Court for the time being, his Deputy or Clerk shall carefully keep such Notes or Writings on a file, and do upon Application unto him or them made by the said Secondaries and Under Sheriff of Middlesex, or any of them, give unto them or any of them requesting the same from time to time, or suffer them to take an Account in Writing thereof, according to the Accounts by him or them taken in pursuance of this Order.

And that this Order may be made the more Publick, It is further Ordered, that the same be made a standing Rule of this Court, and that Copies hereof be affixed and set up in the several Offices belonging to this Court that all Persons therein concerned may be informed and take notice thereof.

*'Per Cur'.*

Trin.



## Trin. 9 W. III.

*A Rule to prevent Persons suing out Writs of Privilege, &c. who are not Attornies. (a)*

*Whereas notwithstanding the several Orders of this Court, made for prevention of Persons suing out Writs of Privilege, Proprium Capias and Attachments at their own Suits, as Attornies of this Court who never were sworn or had their Names entered on the Roll of Attornies, remaining with the Clerk of the Warrants of this Court, and yet have prosecuted such Writs, so as to free themselves from Arrests, or to force Bail where none ought to be given, which Rules and Orders have hitherto proved Ineffectual. Therefore for the better preventing the said Abuses;*

*It is Ordered That no Attorney shall for the future sue forth, or cause to be sued forth in his own Name, or at his own Suit, any Writ of Privilege, Attachment, Prop' Capias or other such Process; and that the Green-Wax or Keeper of the Seal of this Court, or his Deputy, do not hereafter Seal any Writ of Privilege, Attachment, Prop' Capias, or other such Process, unless the same be first stamped or signed by the Clerk of the Warrants of this Court, or his Deputy, for which no Fee is to be paid, to the Intent to shew that such Person is an Attorney of this Court, duly entered and continued on the said Roll of Attornies; and that every such Writ or Process being not stamped or signed as aforesaid by the said Clerk of the Warrants or his Deputy, shall be of no force to free such Person from Arrest, or to require Bail or to give any Privilege whatsoever, as an Attorney of this Court.*

*Per Cur'.*

## Easter, 13 W. III.

*Cur' Pl'itor' Epi' Elien' infra Insulam Elien'.*

*The Court of Pleas of the Bishop of Ely in the Isle of Ely.*

*ff. Ordinat' est quod omne breve de Certiorari e Cur' hic emanant & Curia placit' Episc' Elien' de futuro dirigend' antequam sigill' fuerit per un' Justiciarior', hujus Cur' cum verbis Insula E-*

*It is Ordered that every Writ of Certiorari issuing out of this Court and for the future directed to the Court of Pleas of the Bishop of Ely, before it be sealed by one of the Justices of this Court, shall be marked with the Words*

*lien' in dorsi ejusdem Brevis signabitur subter nomen Justic' predicti, & si aliquod breve de Certiorari emanabit absque tali indorsemento manu propria ejusdem Justic' superscripto non allocabitur per Judicem Cur' Elien' predicti.*

*Cooke.*

*Per Cur'.*

*Isle of Ely on the back of that Writ, under the Name of the Justice aforesaid; and if any Writ of Certiorari shall issue without such Indorsement superscribed by the proper Hand writing of the same Justice, it shall not be allowed by the Judge of the Court of Ely aforesaid.*

*Ed. Nevil, John Powel, Jo. Blencowe.*

## RULES and ORDERS

OF THE

## Court of Common Pleas.

Mich. 4 Anne, 1705.

*Attornies.*

*Whereas divers Complaints have been made to us, that many Attornies and Clerks of this Court are not admitted of any of the Inns of Court or Chancery, according to (b) ancient Course and Usage by which they might be resorted to, and Business of Law better managed to the greater Ease of the Queen's Subjects, the Neglect whereof is to the great Detriment and Decay of the Societies of the Law and divers Inconveniencies do thereupon daily happen; for Prevention whereof, and to establish a Remedy for the future,*

*It is Ordered by this Court that all Attornies and Clerks of this Court not already admitted into one of the Inns of Court or Chancery shall procure themselves to be admitted into one of the said Inns of Court (if those Honourable Societies shall please to admit them) or into one of the Inns of Chancery before the End of Trinity Term now next ensuing, and take Chambers there (if conveniently they may be had: else that they take Lodgings in some convenient Place near the said Inns, and leave Notice in Writing with the Butler or Porter of such Inn whereof they are*

(a) Trin. 29 Car. II. reg. 3.

(b) Former Rules, Mich. 1654. Trin. 29 Car. II. Mich. 36 Car. II.

are admitted, where their Lodgings or Habitations are, except such Persons who are or shall be hereafter Inhabitants or House-keepers in London, Westminster, Southwark, or the Suburbs thereof, and Liberty of the Tower of London and St. Katherine's there, and such who are sworn Attornies of any Courts within the said Cities, Town and Liberties.

And it is further hereby Ordered, That for the future no Person whatsoever shall be sworn an Attorney, or admitted or entred a Clerk of this Court, (except the Persons before excepted) unless first admitted of one of the Inns aforesaid, and bring and produce at the Time of his being sworn an Attorney, or admitted, or entred a Clerk as aforesaid, a Certificate under the Hand of the Treasurer or Principal of the Inn whereof he is admitted, which they are respectively to give without being paid any Thing for the same; testifying such his Admission; which Certificate every Attorney so sworn shall deliver to the Clerk of the Warrants of the said Court, and every Clerk of this Court so admitted or entred shall deliver to the respective Prothonotary, of whose Office he shall be admitted, to be by the said respective Officers filed, before the Name of such Attorney shall be entred into the Roll of Attornies, or such Clerk admitted, or entred as aforesaid; unto which file of Certificates the respective Treasurers and Principals of the said Inns of Court and Chancery shall or may from Time to Time resort, as they shall see cause, without paying any thing for the same.

And it is further Ordered, that no Attorney already sworn, or Clerk already admitted, or entred, or which hereafter shall be sworn, admitted or entred, and which are or shall be admitted into any of the Societies aforesaid, shall put himself out of the Society whereof he is or shall be admitted, until he be admitted of some other of the said Societies, and deliver to the Treasurer or Principal of such Society whereof he was first a Member, a Certificate in Writing signed by such Treasurer or Principal, testifying his being admitted of such other Society, except such Person shall totally leave off the Practice of the Law, as an Attorney or Clerk in this Court.

And whereas by the Usage, Custom or Orders of the Inns of Chancery, the Members thereof were obliged to, and did come into Commons and continue therein, according to the Orders of such Society, to their great Ease in transacting their Causes one with another, and much Benefit to their Clients; but of late, most or a great Number of the said Attornies and Clerks have neglected to come into Commons or continue therein according to the respective Orders of the said Inns of Chancery, to the great Decay and Detriment of those Societies.

It is further Ordered, That from the End of this present Term, the Attornies and Clerks which now are, or shall be admitted into any of the Inns of Chancery, do and shall come into and continue in Commons for the Time or Times, as by the Orders of such Society whereof they are or shall be admitted, is, are or shall be ordered, limited or appointed for them so to do; and in case any Attorney or Clerk aforesaid shall offend against this Rule or any Part thereof, such Attorney shall be put out of the Roll of Attornies, and such Clerk so offending shall be discharged and displaced from such Office to which he belongs; until he or they give Obedience to this Order. And the respective Prothonotaries and Clerk of the Warrants of this Court and all other Officers whom it may concern, are hereby required to give Obedience to this Order; and see that the same, as to themselves be duly observed.

And for the more effectual and better putting in Execution this Order, and that it may procure the good hereby designed and intended;

It is hereby further Ordered, That the respective Treasurers and Principals of the Inns of Chancery, and the Ancients, Rulers and Governors of the same do and shall, from Time to Time, by such Ways and Means as they shall see fit and convenient, procure and get a List of the Names of such Attornies and Clerks of this Court who are not admitted of any of the said Inns of Court or Chancery, which List the said Treasurers and Principals, Ancients, Rulers and Governors shall yearly in Michaelmas Term deliver unto the Right Honourable the Lord Chief Justice of this Court for the Time being, to the Intent the Offenders against this Order may be compelled to give Obedience to the same.

And it is also hereby further Ordered, That the said Treasurers, Principals, Ancients, Rulers and Governors, in like manner procure and get a List of the Names of such Persons as take upon them to practice as Attornies or Clerks in this Court who are neither sworn Attornies, or admitted or entred Clerks in any of the Offices of this Court; which List is to be delivered as above, to the Intent that such Offenders may be proceeded against in such Manner as shall be thought fit.

Tho. Trevor,  
Jo. Blencowe,  
R. Tracey.

Easter, 9 Anne, 1710.

Fines.

*Whereas by an Act made in the three and twentieth Year of the Reign of Queen Elizabeth, (a) it was amongst other Things enacted, That every Person, who should at any Time thereafter take the Knowledge of any Fine, and should certify the same, that such Person should with the Certificate thereof certify also the Day and Year when the same was knowledge; and that no Person who should take any such Knowledge of any Fine should be bounden, or by any Means enforced to certify any such Knowledge, except it were within one Year next after the said Knowledge taken. And that no Clerk or Officer should receive any Writ of Covenant, whereupon any Fine was thereafter to pass, unless the Day of the Knowledge of such Fine should appear in or by such Certificate, upon Pain of forfeiting five Pounds. And whereas, contrary to the Intent and Meaning of the said Statute, the Days and Years of the Captions of several Fines have been raised and altered after the same have been acknowledged, and other Days and Years inserted, and which sometimes have appeared to be after the Death of the Conusors in such Fines, by Reason whereof several Disputes have arisen, great Delays have been had in the passing such Fines, and that several Fines have been vacated thereupon. Now for the preventing the like Mischiefs and Inconveniencies for the Time to come,*

*It is Ordered by the Justices of this Court that for the future, no Fine whatsoever taken and acknowledged before any Commissioners, by Virtue or Colour of any special Dedimus potestatem to them directed, do pass the Queen's Silver Office, and the Queen's Silver of such Fine be recorded, unless Oath be made before the Lord Chief Justice, or some other Justice of this Court, of the due Execution of the said Fine, and also of the Day and Year when each Conusor so executed the same, where a Rasure in the Day or Year shall appear in the Caption thereof; and that no Fine so acknowledged before such Commissioners in Case of such Rasure, be received and entred by the Clerk of the Queen's Silver of this Court, before there be an Allocatur reciting the Day and Year of each particular Conusor's Acknowledgment, under the Hand of the said Lord Chief Justice, or some other Justice of this Court, for the passing of the said Fine first had and obtained.*

*And it is further Ordered, that no Fine whatsoever taken and acknowledged before the said Lord Chief Justice, or any Judge of*

*Affize, or Serjeant at Law, if the Date of the Caption of such Fine shall appear to have been raised, do for the future pass the Queen's Silver Office, and the Queen's Silver of such Fine be recorded by the said Clerk of the Queen's Silver, before there be an Order under the Hand of the said Lord Chief Justice, or some other Justice of this Court, for his passing and entring such Fine first had and obtained. (b)*

*And it is likewise Ordered, that after any Fine whatsoever shall have passed the said Queen's Silver Office, and the Queen's Silver of such Fine be recorded, that neither the Precipe or Caption of any such Fine or Writ of Dedimus potestatem, or Writ of Covenant, by which any such Fine be passed, shall be raised or altered before there be an Order under the Hand of the said Lord Chief Justice, or some other Justice of this Court, for the doing thereof, and for the amending of all Entries made from such Writ or Writs, first had and obtained. (c)*

*Tho. Trevor, } R. Tracey,  
Jo. Blencowe, } R. Dormer.*

Hil. 9 Anne, 1710.

Trials at Bar.

*I. Whereas Rules for Trials at the Bar of this Court are usually granted one or more Terms before such Trials are appointed to be had; and that the Writs of Habeas Corpora for Summoning the Juries for such Trials, are made out upon Venires returnable in the preceding Term; so that the Attornies for Plaintiffs in such Trials have always Opportunities of giving timely Notice to this Court of the certain Days when such Trials are to come on. And forasmuch as their neglecting to give such Notice is found to be to the Prejudice of other Suitors in this Court. Now for the preventing of any Prejudice or Inconvenience that may happen from such Negligence,*

*It is Ordered by this Court, That the Attorney for the Plaintiff in every Cause, which in such Case shall come to be tried at the Bar of this Court, shall before the Efsoin Day of the Term, in which such Cause shall be appointed to be tried, give Notice to the chief Prothonotary of this Court, or his Secondary, of the Day on which such Cause is to be tried, that the same (as is usual) may be put down in the Court Book provided for that Purpose. And in Case such Attornies shall neglect so to do, that then, without Motion and the special Direction of this Court, such Causes shall not be tried that Term;*

Term ; any Precedent Rule or Practice to the contrary notwithstanding.

*Tbo. Trevor,* } } *R. Tracey,*  
*Jo. Blencowe,* } } *Rob. Dormer.*

## Hil. 9 Anne, 1710.

### Declarations.

II. *W* Hereas upon Special Writs returnable the first Return of any Term the Practice heretofore of this Court hath been, that Declarations delivered thereupon, or left in the Office at any Time before the End of the Term in which the said Writs were returnable were a good Delivery, to oblige Defendants to plead thereto in four Days after Rules given for that Purpose, by Means whereof such Defendants have been deprived of the Benefit of moving to pay Money into Court, or to change the Venue, and divers other Inconveniences having arisen from such Practice : Now to prevent the same for the future,

It is Ordered by this Court, That all Declarations hereafter to be delivered, or left in the Office upon Special Writs in the same Term the said Writs shall be returnable, shall be delivered, or left in the Office at least four Days before the End of every Term, exclusive of the Day of the Delivery thereof or of leaving the same in the Office ; any Practice heretofore to the contrary thereof notwithstanding. (a)

*Tbo. Trevor,* } } *R. Tracey,*  
*Jo. Blencowe,* } } *Rob. Dormer.*

## The same Term, 1710.

### Non-profes.

III. *W* Hereas divers Disputes and Controversies have arisen in this Court (b) touching Non-processes, signed for want of Declarations, in what Time after the Return of the Writ the same may be signed, or what Time the Plaintiff has, after the Return thereof, to deliver his Declaration, or of leaving the same in the Office, before he shall be non-profit for Want thereof : Now for the avoiding of all such Disputes, and for reducing the Practice herein to a Certainty,

It is Ordered by this Court, That upon all Processes returnable the first or any other Return in any Term, the Plaintiff shall have

Liberty to the end of the next ensuing Term, to deliver his Declaration to the Defendant's Attorney, or of leaving the same in the Office, and the Defendant's Attorney having entered his Appearance with the proper Officer, as of that Term in which the Process is returnable, and at the End of the ensuing Term, or in four Days after the End thereof, having given a Rule to declare in the proper Office, and having called on the Plaintiff's Attorney or Clerk in Court (if he can be found) the Defendant, any Time in the Vacation of such ensuing Term, after the Rule for declaring is out, may Sign his Non-profs for want of a Declaration, and not afterwards, and the Plaintiff shall not, without the Leave of the Court, have any longer Time to declare in, than as abovesaid, other than the Time to be limited by the Defendant's Rule ; any Rule or Practice to the contrary hereof notwithstanding.

*Tbo. Trevor,* } } *Rob. Dormer,*  
*Jo. Blencowe,* } } *R. Tracey.*

## The same Term, 1710.

### Bail Bonds.

IV. *W* Hereas several Motions have been made in this Court against the undue Prosecutions had upon Bail Bonds, in having the same put in Suit before the Defendants could have a reasonable Time of putting in Bail in the Original Actions ; and the Time for putting the said Bonds in Suit not appearing to be fix'd and limited, whereby the Practice of the Court in that Case is become doubtful and uncertain : Now for the Information of all Practicers touching the same,

This Court doth think fit, and so Order, That no Bail Bond taken in London or Middlesex, and by Virtue of any Process issuing out of this Court, shall be put in Suit till after four Days exclusive of the Appearance-Day of every Return, upon which the said Process shall be returnable, and that no Bail Bond taken in any other City or County, by Virtue of such Process, shall be put in Suit till after eight Days exclusive of the Appearance Day of any such Return, upon Pain of having all Proceedings made upon such Bail Bonds to the contrary thereof (upon Motion made to this Court for that Purpose) set aside with Costs. (c)

*Tbo. Trevor,* } } *R. Tracey,*  
*Jo. Blencowe,* } } *Rob. Dormer.*

### RULES

(a) Mich. 1 Geo. II. (b) Mich. 1654. *see* 14. 15. 6 Geo. I. reg. 2. See Trin. 3. & 4 Geo. II. Mich. 6 Geo. II.

(c) Trin. 1 W. & M. reg. 2. Hil.

# RULES and ORDERS

## OF THE

### Court of Common Pleas.

Mich. 2 Geo. I. 1715.

Rolls.

*Whereas by the antient (a) Rules of this Court the Common Rolls of Trinity, Michaelmas, and Hillary Terms are by the several Officers to be delivered to the Clerk of the Effoins before the Effoin-Day of the several Terms following, and their Rolls of Easter Term on or before the first Day of Trinity Term following, under the Penalty of 12 d. a Roll, to be paid to the Clerk of the Effoins by such Officers who shall neglect to bring in their Roll; and the Plea-Rolls are to be brought in to the Clerk of the Effoins within three Weeks after the End of the Term following, under the like Penalty. And the Prothonotaries, when they bring in their Rolls as aforesaid, are to deliver to the Clerk of the Effoins an Account of the Carets in Writing, with the Attornies Names who took the said Rolls out of their several Offices. And whereas there have of late been great Neglects in the said Premises,*

*It is hereby therefore Ordered, That the Clerk of the Effoins do, a Fortnight within every Term, lay before this Court an Account of what Rolls are wanting that ought to have been brought in according to the said Rules together with the Attornies Names who took them out of the said Offices, that this Court may proceed as they shall think fit, against such Persons as shall not have brought in their Rolls according to the said Rules.*

P. King, } { R. Tracey,  
Jo. Blencowe, } { Rob. Dormer.

Trin. 2 Geo. I. 1716.

Notice of Trial.

*Whereas in divers Actions and Suits commenced in this Court, the Plaintiff many Times in Pleading concludes ad Patriam,*

*and the Defendant not being obliged to join Issue, nor Demur till a four Days Rule is expired, Plaintiffs are thereby greatly delayed in trying their Causes; for the Prevention of which for the future, (b)*

*It is Ordered, That in all Cases where the Plaintiff concludes ad Patriam, the Defendant's Attorney, or Clerk in Court, shall be bound to accept of Notice of Trial upon the Back of such Pleading, whether the same be delivered to the Defendant's Attorney or Agent, or left in the proper Office, where the same may be left by the Course of the Court: And such Notice of Trial so given, or left as aforesaid, shall be as good and effectual as if Issue had been actually joined.*

P. King, } { R. Tracey,  
Jo. Blencowe, } { Rob. Dormer.

Mich. 3 Geo. I. 1716. (c)

Countermand of Trial.

*It is Ordered this Term by the Court, That no (d) Countermand of Trial at the Assises shall be good, unless Notice be given two Days before the Commission Day.*

N. B. No Countermand to be given on a Sunday.

Hil. 6 Geo. I. 1719.

Notice of Inquiry.

*I. Whereas by a Rule of this Court made in Trinity Term in the (d) second Year of the Reign of his Majesty King George, it was Ordered, That in all Cases where the Plaintiff concludes ad Patriam, the Defendant's Attorney or Clerk in Court shall be bound to accept of Notice of Trial upon the Back of the Pleading, whether the same be delivered to the Defendant's Attorney or Agent, or left in the proper Office, where the same may be left by the Course of the Court. And such Notice of Trial so given or left as aforesaid, shall be as good and effectual as if Issue had been actually joined.*

*And whereas it appears, That notwithstanding the said Rule, the Plaintiffs in divers Actions and Suits commenced in this Court are delayed, for that the Defendants Attornies are not obliged to take the like Notice of executing Writs of Enquiry;*

(a) Easter 5 W. & M. reg. 2. East. 34 Car. II. reg. 3. Mich. 1649. Mich. 1654. Feb. 7.  
(b) Mich. 1654. Feb. 21. See Hil. 6 Geo. I. & Trin. 10 Geo. I. (c) Fixed up in the Offices.  
(d) Mich. 1654. Feb. 21. (e) And see Trin. 10 Geo. I.

It is therefore hereby Ordered, That in every Cause where the Plaintiff concludes *ad Patriam*, and giveth Notice of Trial upon the Back of his Pleading, pursuant to the said Rule, if the Defendant doth not join Issue on such Pleading before the Rule be out, that in every such Case after Judgment obtained, the Defendant's Attorney shall be obliged to accept Notice of executing a Writ of Enquiry, from the Time that Notice of Trial was given on the Back of such Pleading as aforesaid.

P. King, } § R. Tracey,  
Jo. Blencowe, } § Robert Dormer.

### The same Term, 1719.

Entering Appearances and Bail.

II. *Whereas there have been great Neglects in entering Appearances for Defendants and in entering Special Bail upon Record;*

It is hereby Ordered, For preventing the same, That all Rules and Orders of this Court heretofore made, relating to the Premises, shall from henceforth be punctually observed, and the Pains and Penalties therein contained shall be inflicted on Offenders.

*And for the farther enforcing the said good Rules and Orders already made,*

It is hereby further Ordered, That from and after the last Day of this present Hillary Term, every Attorney of this Court accepting or subscribing any Warrants to appear for any Defendant, to any Writ issuing out of this Court, shall within four Days after the Appearance Day, to the Return of every such Writ in London or Middlesex, and within eight Days after the Appearance Day in every Writ in any other County, enter the Appearance of such Defendant with the proper Officer. And if any Attorney accepting any Warrant to appear, or subscribing any Process or Warrant to appear, do not enter such Appearance within the Time aforesaid, he shall for such Offence be liable to an Attachment, and shall not be discharged therefrom till he hath paid full Costs to the Plaintiff, for the Prosecution on such Attachment; and the Defendant, when he appears, shall be compelled to plead, as of the Time when he should have pleaded, if his Appearance had been duly entered.

And it is likewise further Ordered, That all Bails taken by Commissioners, pursuant to the (a) Act of Parliament for taking Special Bails in the Country, shall be transmitted to the Lord Chief Justice, or to one of the Justices of this Court, viz. every Bail taken within

forty Miles of London, within ten Days after the Caption thereof; and every Bail taken above forty Miles from London, within twenty Days after the Caption thereof; unless all the said Justices shall be in their Circuits; and then as soon as any one of them shall be returned to London out of his Circuit, being the Time prescribed by the (b) Orders of this Court, to be observed by the Commissioners; and after such Transmission, shall be forthwith delivered to, and filed with the proper Officer, to be entered upon a Record, or otherwise it shall be as no Bail; and the Plaintiff is at Liberty to proceed on the Sheriff's Bond, as if no such Bail were ever put in; and the Defendant, in Case he be admittible to plead to the Original Action, shall not be admitted so to do, unless he first pay the full Costs to the Plaintiff for the (c) Prosecution on the Bail Bond, and plead as of the Time when the Bail should have been duly entered.

P. King, } § R. Tracey,  
Jo. Blencowe, } § Rob. Dormer.

### Hil. 8 Geo. I. 1721.

Sheriffs, returning Process.

I. *Whereas great Delays have been occasioned to the Suitors of this Court, by reason that Sheriffs, Under-Sheriffs, and their Deputies, Bailiffs, Coroners, Bailiffs of Liberties, and other Officers and Persons having Return of Process issuing out of this Court, do not in due Time make a Return of such Process, (d) or of the Warrant or Precept thereupon, by which Means great Expences are occasioned, and Plaintiffs delayed in the Recovery of their just Debts; for the Prevention therefore of the like Delays for the future,*

It is Ordered by this Court, That from and after the last Day of this present Hillary Term, if any Sheriff, Under-Sheriff, or any of the Officers or Persons above-named, or any Officer or Person, having the Return of any Process issuing out of this Court, or of any Precept or Warrant thereupon, shall neglect or refuse to return the same within six Days next after Service of a Rule of this Court for that Purpose, such Sheriff, Under-Sheriff, and every other of the above-named Officers or Persons, shall be liable to pay the Costs occasioned by such Neglect, to be taxed; any Rule or Order of this Court to the contrary notwithstanding.

P. King, } § R. Tracey,  
Jo. Blencowe, } § Rob. Dormer.

R

The

(a) Stat. 4 W. & M. cap. 4. (b) 10 Mar. 1692. 5 W. & M. and see Mich. 13 Geo. I. and Mich. 6 Geo. II. reg. 1. (c) Hil. 9 Ann. reg. 4. (d) Mich. 1654. stat. 2. Hil. 15 & 16 Car. II.

## The same Term, 1721. (a)

*Ne Recipiatur.*

**N**otice is hereby given to the Attornies and Practisers in the Court of Common Pleas at Westminster, that the Right Honourable Sir Peter King, Knt. Lord Chief Justice of the same Court, hath Ordered that Ne Recipiatur shall be allowed to be entred for the Sittings of Nisi prius after every Term, unless the Records of Nisi prius and Writs be made up and brought into Court on or before the Days and Sittings respectively. (b)

Robert Maidstone, Dep. Cl. Tles.

## Easter, 8 Geo. I. 1722.

*Prisoners.*

**W**hereas many Doubts have arisen on the Rules for discharging Prisoners committed to the (c) Fleet Prison, the (d) County, and other Gaols, and for discharging Persons rendering themselves, or being rendred to the Fleet Prison, in Discharge of their Bail (by Virtue of Process of this Court) by Superfedeas for want of Prosecution; for Remedy whereof,

It is Ordered by the Court, That if any Plaintiff shall (e) declare against any Defendant in Custody of the Warden of the Fleet Prison, or of any Sheriff, or other Officer, by Virtue of any Process of this Court, and shall not further proceed to Judgment within three Terms after such Declaration delivered, inclusive of the Term in which the Declaration shall be delivered, the Defendant having appeared. Or if any Plaintiff having obtained Judgment in this Court in any Action against any Defendant a Prisoner, as aforesaid, and shall not charge such Defendant so remaining a Prisoner, in Execution upon the Judgment so obtained, within two Terms next after such Judgment so had and obtained, including the Term in which the said Judgment shall be signed, or within two Terms now next ensuing upon Judgment already had, then such Defendant so remaining in Prison may be discharged out of Custody, where he shall be so detained by Superfedeas, to be allowed by one of the Justices of this Court,

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(a) Notice fixed up in the Prothonotaries Offices. (b) East. 1 Ja. II. reg. 2. and see ante, May v. Annis. (c) H. 14 & 15 Car. II. reg. 3. Mich. 1654. (d) E. 5 W. & M. reg. 3. (e) Hil. 8 Geo. II. reg. 1. (f) If a Prisoner, discharged or ordered to be discharged by Superfedeas for want of Prosecution, shall afterwards be arrested or detained in Custody by Action of Debt, upon Judgment obtained in the Cause, a common Appearance will be accepted. Hil. 8 Geo. II. reg. 2.

if Cause shall not be shewn by the Plaintiff, or his Attorney, why such Plaintiff had not proceeded before that Time to Judgment and Execution, as aforesaid, upon Notice to either of them given by the Defendant's Attorney or Agent, and Oath made of such Notice given. (f)

And if any Defendant hath, or shall render him or herself, or be rendred to the Fleet Prison, in Discharge of his or her Bail, at the Suit of any Plaintiff, where no further Proceedings by Declaration have been had against such Defendant so rendred, before such Render, unless the Plaintiff shall declare against such Defendant within two Terms after such Render; and where any Declaration hath been delivered against such Persons so rendring him or herself, or being rendred, or Judgment has been had against him or her before such Render, unless the Plaintiff shall proceed to Judgment upon such Declaration delivered within three Terms after such Render (the Defendant having appeared) and charge such Defendant in Execution within two Terms after such Judgment obtained, such Defendant may be discharged out of Custody, by Superfedeas to be allowed by one of the Justices of this Court, if Cause shall not be shewn to the contrary, as aforesaid, by the Plaintiff, or his Attorney, upon Notice to either of them, given by the Defendant's Attorney, or Agent, and Oath made of such Notice given.

P. King, } } R. Tracey,  
Jo. Blencowe, } } Rob. Dormer.

## Trin. 10 Geo. I. 1724.

*Notice of Trial and Inquiry.*

**W**hereas in Trinity Term in the second Year of his present Majesty, a Rule of this Court was made, 'That in all Cases where the Plaintiff concludes *ad Patriam* the Defendant's Attorney, or Clerk in Court, should be bound to accept of Notice of Trial on the Back of the Pleadings.

And whereas in Hillary Term in the sixth Year of his said Majesty's Reign, another Rule of Court was made, 'Obliging every Defendant's Attorney, in all Cases where Issue is not joined, after Judgment obtained to accept of Notice of Executing a Writ of Inquiry from the Time of the Notice of Trial given on the Back of the said Pleading, as by the said Rules will more fully appear.

And

id whereas the said Rules have, by Experience been found to be of great Use and Advantage to Plaintiffs, for the more speedy Recovery of their just Debts; but no Provision made in Cases where Defendants Delay to the Plaintiff's Declaration, and by means give great Delays to Plaintiffs, hereby the said Rules Defendants are not obliged till after Judgment obtained, to accept Notice of Executing a Writ of Inquiry; is therefore now Ordered by this Court, That in all Cases where the Defendant delays to the Plaintiff's Declaration, the Plaintiff's Attorney, or Clerk in Court, shall be obliged to accept of Notice of Executing Writ of Inquiry on the Back of such Plea in Demurrer. And in Case where Defendant pleads such a Dilatory Plea, the Plaintiff is obliged to Demur to, that in a Case the Defendant's Attorney, or Clerk in Court, shall be obliged to accept of Notice of Executing a Writ of Inquiry on the Back of such Demurrer.

P. King, } } Rob. Dormer,  
R. Tracey, } } Alex. Denton.

## Hil. 11 Geo. I. 1724.

Whereas Complaint hath been made unto Us, by the Clerk of the (a) Treasury, and most of the Clerks there, that divers Practices of this Court, do oftentimes make up Issues of Terms, in which they were joined, and thereby greatly defraud the Officers of their due Fees;

is therefore Ordered by this Court, that every Issue shall be entered on Record of Term in which it was joined, notwithstanding any Consent given by the Attornies, or Agents, on either Side, to the Consent. And that whosoever shall offend in any of this Rule, shall be adjudged guilty of Contempt of this Court, and shall be proceeded against accordingly.

And it is further Ordered, For the more usual detecting any such intended Fraud, that all and may be Lawful for the Clerk of the Treasury to require any Person suspected of such illegal Practice as aforesaid, to produce such Proceedings in the Cause, as he the Clerk of the Treasury shall think necessary for the better discovering when Issue was lawfully joined.

P. King, } } Rob. Dormer,  
R. Tracey, } } Alex. Denton.

## Mich. 12 Geo. I. 1725.

**Bail. Outlawry.**  
It is Ordered by this Court, That before any Allowance of any Writ of Error, or Reversing of any (b) Outlawry be had by Plea or otherwise, through or by want of any Proclamation to be had or made according to the Form of the Statute in that Case made and provided, after the first Day of November in this present Term, the Defendant and Defendants in the Original Action shall put in (c) Bail, not only to appear and answer to the Plaintiff in the former Suit, in a new Action to be commenced by the said Plaintiff, for the Cause mentioned in the first Action, but also to satisfy the Condemnation, if the Plaintiff shall begin his Suit before the End of two Terms next after the allowing the Writ of Error; or otherwise avoiding of the said Outlawry.

R. Eyre, Rob. Dormer, Alex. Denton.

## Trin. 12 Geo. I. 1726.

**Entering Causes.**  
Ordinatus est quod nulla Causa in aliquo Termino post clausum hujus Terminum in libro hujus Curie ponatur arguenda post ultimum diem argumentorum nisi Curia hic proinde moveatur & illud ordinabit. It is Ordered, That no Cause in any Term, after the End of this Term, be put in the Book of this Court, to be argued after the last Day of (d) Arguments, unless the Court here be thereupon moved, and shall order it.

Per Cur'.

By the Court.

## Mich. 13 Geo. I. 1726.

**Bails.**  
Whereas great Inconveniences have happened by reason that Bails taken before Commissioners in the Country and transmitteth to, and allowed by the Lord Chief Justice, or one of the Justices of this Court, have not been duly filed with the proper Officer, according to (e) the Rules of this Court;

It

(a) Easter, 5 W. & W. Mich. 1654. 22. 21. (b) Hillary, 2 Car. I. Hil. 15 & 16 Car. II. 17 Car. II. Trin. 2 J. II. (c) Mic. 6 Geo. II. reg. 6. (d) No Argument on the four last and first Days of the Term. (e) Reg. 10 Mar. 5 W. & M. Hil. 6 Geo. I. reg. 2.



It is therefore Ordered by this Court, That from and after the last Day of this present Term, all Bails taken before Commissioners in the Country, and transmitted to and allowed by the Lord Chief Justice, or one of the Justices of this Court, shall be delivered to the Clerk of the said Lord Chief Justice, or such other Judge as shall allow the said Bail, which Clerk shall take the (a) Fees due to the proper Officer for the Entry thereof, and shall forthwith deliver the said Bail to be filed and pay the said Fees to such proper Officer.

And it is farther Ordered, That every Defendant's Attorney shall give notice to the Plaintiff's Attorney of the taking such Bail, within four Days after the Caption thereof. (b)

R. Eyre, R. Price, Alex. Denton.

## Hil. 13 Geo. I. 1726.

## Fines.

It is Ordered, That no Fine whatsoever, taken and acknowledged before any Commissioner, by Virtue of any Writ of *De dimis potestatem* to them directed, be allowed to pass, unless some Person present when such Fine was taken and acknowledged, do personally appear before the Lord Chief Justice, or some other Justice of this Court, and be examined upon Oath, touching the due Execution thereof, and particularly, whether such Person knows the Parties acknowledging such Fine. (c)

R. Eyre, } F. Page.  
R. Price, } Alex. Denton.

## East. 13 Geo. I. 1727.

Fees due to the Warden of the Fleet. (d)

Whereas several Matters in Controversy between the Prisoners and the Warden of the Fleet were heard by the Right Honourable Sir Robert Eyre, Knt. Lord Chief Justice of his Majesty's Court of Common Pleas at Westminster, the Honourable Robert Price, Esq; Sir Francis Page, Knt. and Alexander Denton, Esq; Justices of the said Court, at Serjeants Inn Hall in Chancery-lane, on Monday the twenty-fourth Day of April, on Wednesday the twenty-sixth Day of the same Month of April, on Monday the first Day of May following, and on Friday the fifth Day

of the same Month of May in Easter Term, in the thirteenth Year of the Reign of our Sovereign Lord King George, Anno Domini 1727. Upon which hearing the said Lord Chief Justice, and the rest of the Justices of the said Court, came to the following Resolutions.

I. That there is due and ought to be paid to the Warden of the Fleet for every Commitment Fee (exclusive of Commons) from all Persons of the Degree of an Esquire, Gentleman or Gentlewoman, or any other Person under those Degrees, who shall enter on the Master's Side of the said Prison, 2 l. 4 s. 4 d.

And that there ought to be paid to the Warden by every such Person for the Use of the Minister of the said Prison, 2 s.

II. That there is due and ought to be paid to the Warden, for a Commitment Fee from every Prisoner on the Wards or Common Side, not taking Part of the Poor's Box, 1 l. 6 s. 4 d.

And that every such Person ought to pay to the Warden for the Use of the Minister of the said Prison, 1 s.

And that every Prisoner taking Part of the Poor's Box ought to pay to the Warden, 7 s. and 4 d. and no more for his Commitment Fee, and nothing to the Minister.

III. That there is due and ought to be paid to the Warden of the Fleet for every Render in each Cause, 2 l. 4 s. 4 d. and nothing to the Minister.

IV. That there is due and ought to be paid to the Chamberlain as his Fee for every Prisoner's Entrance into the House, 1 s. and no more.

V. That there is due and ought to be paid to the Warden for every Prisoner's Discharge, either by Creditor or *Superfedeas*, as a Fee for his Dismission out of Prison, without any Regard to the Number of Causes wherewith he stands charged, 7 s. and 6 d. and no more.

VI. That there is due and ought to be paid to the Clerk of the Papers for every Discharge of every Action, 2 s. and 6 d.

And for the Copy of every Cause, not exceeding three, 1 s.

And for each and every Cause exceeding three Causes, 4 d. besides the 1 s. a-piece for each of the said first three Causes.

VII. That there is due and ought to be paid to the Clerk of the Papers for his Certificate of the Prisoner's Discharge, delivered to the Prisoner himself, without any Regard to the Number of Causes he stood charged with, 2 s. 6 d.

And for his Certificate to the Warden of such Discharge, 2 s. 6 d.

VIII. That there is due and ought to be paid to the Clerk of the Inquiries on the Discharge

(a) The Fees are now left with the proper Officer.  
6 Ann.

(d) But see the Table of Fees, 19th January the 3 Geo. II.

(b) The Practice is altered. Mic. 6 Geo. II.

(c) East.

charge of a Prisoner by the Creditor, and not by *Supersedeas*, 2 s. 6 d.

IX. That there is due and ought to be paid to the Turnkey (who is now both Porter and Gaoler) for the Prisoner's Entrance into the House, 2 s.

And for such Prisoner's Discharge to the Turnkey, being both Porter and Gaoler, 2 s. 6 d.

X. That there is due and ought to be paid to the Turnkey for every Declaration delivered to him for a Prisoner, 1 s.

XI. That there is no Fee due to the Warden upon his accepting Security on the Prisoner's having the Benefit of Day Rules.

XII. That there is no Fee due to the Warden for Lodging or Chamber Rent where the Prisoner has not actual Possession of the Chamber; but that there is due to the Warden for every Prisoner or Prisoners, his or their Lodging or Chamber Rent, 2 s. and 6 d. *per Week*, such Lodging or Chamber being furnished.

XIII. That there is due to the Minister that officiates and performs Divine Service within the said Prison for the Time being, from every Prisoner within the Walls of the Prison, or without the Walls and within the Rules 4 d. *per Week* to be paid to the Warden for the Use of such Minister.

And that no such Minister or any other Clergyman being a Prisoner within the Walls or Rules of the Fleet do presume to Marry any Persons without License within the Prison or Rules of the Fleet: And that the Warden and his Officers do use their utmost Care and Vigilance to prevent all such Marriages.

XIV. That there is no fresh Commitment Fee due to the Warden upon the Prisoner's bringing himself back to the Fleet by *Habeas Corpus*, where the Warden himself had removed him thence by *Habeas Corpus*.

And that there is no Fee, Gratuity or Reward due to the Warden for his returning an *Habeas Corpus*.

But that there is a Fee of 5 s. and 4 d. due to the Clerk of the Papers, for the Allowance of every Writ of *Habeas Corpus*; and 4 s. for the Return of the first Cause, and 2 s. for every other Cause, and no more.

XV. That where a Prisoner dies in the Fleet the Warden shall detain the Body no longer than till the Coroner's Inquest be finished, which shall be done with all reasonable speed; and immediately afterwards the Body shall be delivered to the Prisoner's Friends or Relations, if they desire it, without Fee or Reward.

XVI. That it is the Duty of the Warden, and belongs to him to keep the Prison House

and Windows in necessary and good Repair; and to keep the Bog-Houses and Dunghil as clean and free from Stench and Noisomeness as possible.

XVII. That a Table of all Gifts and Bequests made for the Benefit of the Prisoners in the Fleet, expressing the particular Purposes for which the same were given, be prepared by the Warden, and hung up in the Hall of the said Prison.

XVIII. That the Wards Gate be opened at five of the Clock in the Summer, and seven of the Clock in the Winter, and do stand constantly open in the Day-Time, according to the Orders made the 17th of February 1617.

And whereas this Court, upon further Consideration of the Premises, this present Trinity Term in the thirteenth Year of the Reign of our Sovereign Lord King George, is of Opinion that the said Resolutions are just;

It is hereby Ordered, That the same be observed by the said Warden and Prisoners and all other Persons therein concerned. (a)

R. Eyre, } 5 F. Page,  
Ro. Price, } 2 Alex. Denton.

## RULES and ORDERS

OF THE

### Court of Common Pleas.

Mich. 1 Geo. II. 1727.

Service of Process, and Pleading.

1. *To establish the Practice of this Court upon the late (b) Act of Parliament, for preventing Frivolous and Vexatious Arrests;*

It is Ordered, That from and after the last Day of this present Term, in all Cases where a Copy of the (c) Process of this Court is served upon any Defendant or Defendants, and an Appearance is entered for such Defendant or Defendants, by the Plaintiff's Attorney, pursuant to the said Act, the Plaintiff's Attorney in such Case shall leave a Copy of the Declaration in the Office, and

S likewise

(a) Altered by the Table of Fees, 19 Jan. the 3 Geo. II. & reg. 1 il. 3 Geo. II. (a) 12 Geo. I. cap. 29. Where the Plaintiff appears for the Defendant, the Declaration shall be left in the Office, and Notice thereof given to the Defendant, signifying the Nature of the Action, &c. (c) See Stat. 5 Geo. II. cap. 27.

likewise give Notice thereof to the Defendant or Defendants, by delivering an *English* Notice, written in a Secretary Hand, to such Defendant or Defendants, or by leaving the same at the last, or most usual Place of Abode of such Defendant or Defendants, signifying the Nature of the Action, at whose Suit it is prosecuted, and in whose Office such Declaration is left: And that, in Case of special (a) Writs, returnable the first Returns of *Hilary* and *Trinity* Terms, and the first or second Returns in *Easter* and *Michaelmas* Terms, such Defendant or Defendants, should take Notice, that unless such Defendant or Defendants, plead to such Action within four Days after the Appearance Day of the Return of such Writ; and in Case of a common *Capias*, or any other special Writ within the first four Days of the next Term, Judgment will be entered against such Defendant or Defendants, by Default.

And from the Time of giving such Notice as aforesaid, such Declaration shall be deemed well delivered to such Defendant or Defendants, and not otherwise.

And in Case such Defendant, or Defendants, after such Notice given, do not plead by the Time the Rules for pleading are out, the Plaintiff in such Case may sign his Judgment (a Rule to plead being first given) without any other or further calling for a Plea, and thereon give Notice of executing his Writ of Inquiry, either by delivering Notice in Writing to such Defendant or Defendants, or by leaving the same at the last or most usual Place of Abode of such Defendant or Defendants; which shall be a sufficient Notice to such Defendant or Defendants, of the Time of executing such Writ of Inquiry.

And it is further Ordered, That from and after the last day of this present Term, the Rule made the last *Trinity* Term, to establish the Practice of this Court upon the said late Act of Parliament, shall be discharged.

R. Eyre, } S Rob. Price,  
Alex. Denton, } S S. Cooper.

### Mich. 1 Geo. II. 1727.

Notice fixed up in the Prothonotaries Offices.

Demands.

II. **D**eclarations, Pleas, Replications and other Pleadings, and also Oyer of Writs, Bonds, and other Deeds, shall be demanded by a Note in Writing. (b)

I

(a) Enlarged to all Process, by the Rule Mich. 3 Geo. II. and see the Rule East. 3 Geo. II. (b) Ante, *Amimus East. 11 Anne.* (c) Ante, *Grimes v. Clever. Smith v. Jenks. Morfe v. Farnham.*

### Mich. 2 Geo. II. 1728.

Notice fixed up in the Office.

Motions.

I. **A**ttornies of this Court are desired to take Notice, That the Court will enlarge no Rule for shewing Cause, unless Notice be given of Motion to enlarge such Rule, and Affidavit made of such Notice. And likewise that the Court will not set aside any Judgment for Irregularity, unless Motion be made to the Court for that Purpose, (c) before a Writ of Inquiry executed.

### The same Term, 1728.

Notice fixed up in the Office.

Attorneys.

II. **N**otice is hereby given, That whoever would be admitted an Attorney, must apply for that Purpose, before the last Week in Term.

### Hil. 2 Geo. II. 1728.

Declarations in Ejectment.

**W**hereas Complaint hath been made unto this Court of unwarrantable Practice, in regard to Declarations in Ejectment brought and delivered to the Secondaries of this Court, in order to have Rules to plead: For Remedy thereof,

It is Ordered by the Court, That from and after the first Day of February in this present Term, no Declaration or Declarations in Ejectment shall be taken in, or received by any of the Secondaries of this Court, unless such Declaration or Declarations, be signed by some Serjeant at Law, and delivered by himself to one of the Secondaries, in open Court.

And it is further Ordered, That the Secondaries shall in the Morning next after the End of every Term, and at all other Times, when required, produce and shew to any Person or Persons who shall demand the same, their Alphabetical Paper of Ejectments mov'd

or

or delivered into Court, in each Term, in manner aforesaid.

R. Eyre, }  
Rob. Price, } { Alex. Denton,  
J. Fortescue A.

### Mich. 3 Geo. II. 1729.

#### Copies of the Issue.

**I**t is hereby Ordered, That in all Causes which shall be tried at the Bar of this Court, the Lord Chief Justice, and the rest of the Justices of the said Court, shall respectively have Copies of the Issues in the said Causes delivered to them four Days before the Time appointed for Trial of such Causes.

By the Court.

### The same Term, 1729.

#### Time of Pleading.

**I**t is Ordered, That upon all Process sued out of this Court, returnable the first or second Return of any Term, if the Plaintiff declares in *London* or *Middlesex*, and the Defendant lives within twenty Miles of *London*, the Defendant shall plead within four Days after such Declaration delivered, without any Imparlance; and such Declaration may be delivered *de bene esse*. And in Case the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from *London*, the Defendant shall plead within eight days after the Declaration delivered, without any Imparlance; and in Default of Pleading, as aforesaid, the Plaintiff may sign his Judgment. (a)

By the Court.

### January 19. 3 Geo. II. 1729.

**A** Table of Fees to be taken by the Warden of the Prison of the Fleet for any Prisoner or Prisoners Commitment, or coming into Gaol or Chamber-Rent there, or Discharge from thence in any Civil Action;

Settled and Established the 19th. Day of January in the third Year of the Reign of his Majesty King George the Second, A. D. 1729. Pursuant to an Act of Parliament lately made,

Intituled An Act for the Relief of Debtors, in respect to the Imprisonment of their Persons.

Every Prisoner charged with one or more Actions (who at his own Desire shall go on the Master's Side) to pay to the Warden for a Commitment Fee, 1 l. 6 s. 8 d.

Every Prisoner charged with one or more Actions (who shall go on the Common Side) not being intitled to partake of the Poor's Box, to pay 13 s. 4 d.

Every Prisoner intitled to partake of the Poor's Box.

Every Prisoner to pay for his Discharge 7 s. 4 d.

Every such Prisoner on the Master's Side, who at his own Desire shall have a Bed to himself, to pay for Chamber-room, use of Bed and Bedding and Sheets, to the Warden *per Week*, 2 s. 6 d.

If two in a Bed and no more, for Chamber-room, use of Bed, Bedding and Sheets, each to pay to the Warden *per Week*, 1 s. 3 d.

If the Prisoner finds his own Bed, Bedding and Sheets, (which the Warden is in no sort to hinder him of) then he shall pay for Chamber-room to the Warden *per Week* 1 s. 3 d.

If there be two Prisoners in one Bed, finding their own Bed, Bedding and Sheets, then each of them to pay to the Warden *per Week* 7 d. 2.

Every Prisoner not being intitled to partake of the Poor's Box, to pay to the Porter and Gaoler, now called Turnkeys, on his Commitment, 2 s.

Every Prisoner on a Commitment, upon a Surrender at a Judge's Chamber, to pay to the Tipstaff, 6 s. 8 d.

Every Prisoner on a Commitment upon a *Habeas Corpus*, at a Judge's Chamber, to pay to the Tipstaff 4 s. 2 d.

Every Prisoner on a Commitment in Court to pay to the Tipstaff 7 s. 6 d.

No other Fees for any Prisoner for the Use of Chamber, Bed, Bedding or Sheets, or upon Commitment or Discharge of any Prisoner in any Civil Action, nor any Commitment Fee to be taken of any Prisoner intitled to partake of the Poor's Box, nor any Chamber-rent to be taken of any Prisoner on the Common Side.

R. Raymond,  
R. Eyre,  
Tho. Pengelly.

Ed. Bellamy,  
John Thompson,  
Rob. Alsop,  
John Barnard.

Hil.

(a) See Easter, 3 Geo. II. Former Rules, Hil. 9 Ann. reg. 2. Mic. 1 Geo. II.

Hil. 3 Geo. II. 1729.

*De Termino Sancti Hillarii anno regni Domini Georgii Secundi nunc Regis Magnæ Britanniae, &c. Terrio.*

*Regula generalis in Communi Banco.*

*Warden of the Fleet and Prisoners.*

**O**rdinatum est quod omnes & singuli Ordines five Regule hic inferius scripti & stabiliti secundum directionem cujusdam Actus Parliamenti anno regni dicti Domini Regis secundo facti & editi, intitulati An Act for the relief of Debtors with respect to the Imprisonment of their Persons, bene stricte & fideliter observati & conservati erunt tam per Guardianum Prisonæ Domini Regis de la Fleet & omnes officarios & servos suos quam per omnes Prisonarios qui modo sunt vel in futurum de tempore in tempus erunt commissi custodiæ præfati Guardiani.

Et ulterius ordinatum est quod hæc regula cum omnibus & singulis Ordinibus five Regulis prædictis affixa erit in Aula dictæ prisonæ pro usu beneficio & inspectione prisonariorum in prisona prædicta detentorum.

Per Cur'.

**I**t is ordered, That all and singular the Orders or Rules here underwrote and established pursuant to an Act of Parliament made and published in the second Year of the Reign of our said Lord the King, intituled *An Act for the Relief of Debtors with respect to the Imprisonment of their Persons*, be well, strictly and truly observed and kept, as well by the Warden of the Prison of our Lord the King of the Fleet, and all his Officers and Servants, as by all Prisoners who now are, or at any Time hereafter shall be, committed to the Custody of the said Warden.

And it is further ordered, That this Rule, with all and every the Rules or Orders aforesaid shall be fixed up in the Hall of the said Prison for the Use, Benefit, and Inspection of the Prisoners detained in the aforesaid Prison.

By the Court.

*Constitutions and Orders renewed and established touching the Government of the Fleet Prison, by Sir Robert Carlyn, Knt. Chief Justice of the King's Bench, Sir William Cordell, Knt. Master of the Rolls; Sir James Dyer, Knt. Chief Justice of the Common Pleas; Sir Edward Saunders, Knt. Chief Baron of the Exchequer, and others by Virtue of a Commission under the Great Seal of England, bearing Date the 3d Day of June in the third Year of the Reign of Queen Elizabeth, and afterwards reviewed and exemplified under the Great Seal, the first Day of February in the 37th Year of the same Reign; and again declared and established as Rules and*

*Orders by which the said Prison of the Fleet should be governed by Letters Patent, granted to Sir Jeremy Whichcot, of the Office of Warden of the Fleet, in the 19th Year of the Reign of King Charles the Second.*

I. That it may be lawful to the said Warden, or his Deputy, to appoint so many of the Household Servants as to either of them shall seem good, to open and shut the two Utter-Gates of the Fleet at such Hours as the Gates of *Ludgate* and *Newgate* are accustomed to be opened and shut; and the said Persons to carry in their Hands Halberds, Bills or any other Weapon, as shall seem good unto the said Warden or Deputy, within his Precinct or Liberty.

II. That it is and shall be lawful to the said Warden and his Deputy to take Order from Time to Time, that no Person coming there do carry any Weapon further than the Porter's Lodge there, be he Stranger or other, unless they be Licensed so to do by the Discretion of such as the same Warden shall appoint to keep the Gate there.

III. That it may be lawful for the said Warden, or his Deputy, and so many of his Household as shall be thought needful, to keep Watch in Harness or otherwise within his Precinct at all Times, as he shall see Cause for his better Safeguard, if he shall suspect any Prisoner within his Custody to intend to make an Escape.

IV. That it may be lawful for the said Warden to take Order at all Times for such Money as shall be gathered at the Box, or otherwise generously given to Poor Men there for the Distribution thereof amongst them, if any Contention shall arise; and that the said Poor Men shall always keep one Key of the said Box, and another Key to be at the Warden's Appointment.

*Orders made by the Right Honourable Sir Edward Herbert, Knt. Lord Chief Justice of his Majesty's Court of Common Pleas at Westminster, and the rest of the Justices of the said Court, Friday the 17th Day of February, Anno Domini 1687, concerning his Majesty's Prison of the Fleet.*

V. If the Prisoners on the Master's Side refuse, or be not able to pay their Chamber-Rent, then and in such Case the Warden has Liberty to turn them out of his or her Chamber into the Wards; but no Prisoner whatsoever to be confined under the Pretence of Non-payment of Chamber-Rent, but all of them to have Liberty of walking in the Foreyard, Hall and Cellar of the House in the Day Time without Interruption; the Ward Gates in the Day Time to stand constantly open; and to be opened, (viz.) at five a Clock in the Morning in the Summer, and seven in the Winter.

And

: And the said Justices do further Order, That the Warden shall be at Liberty to shut the Ward Gates at nine of the Clock at Night in the Winter-Time, and at ten in the Summer, if he so think fit, provided he keep a Watchman constantly to attend there, to let out and in such Persons as shall have Occasion to go to the Necessary-House, they returning as soon as he or she has done there.

VI. That the Warden shall not for the future Detain or Imbezil any Prisoner's Goods; but that the said Warden has Liberty to detain the Person of such Prisoner or Prisoners after they are discharged by their Creditors, until all lawful Fees and Dues shall be fully paid and satisfied.

VII. That the Warden shall with all convenient Speed make and provide a confined Room or Dungeon in the Wards, as it was before the great Fire of London, for the confinement of Persons endeavouring to make their Escapes, or guilty of any other great Misdemeanor, that the general Quietness and Liberty of the rest of their fellow Prisoners may not be restrained or suffer thereby.

*And the Persons whose Names are hereunto subscribed, having reviewed and considered the said Rules and Orders, and being informed that a confined Room was provided, according to the said last mentioned Order, and that the same is boarded, wholesome and dry, do Order and Declare, that the Rules and Orders before mentioned shall continue to be Rules and Orders for the better Government of the Fleet Prison, and be observed accordingly.*

*And whereas some further Regulations are proper and necessary to be made for the better Government of the said Prison, the Persons whose Names are hereunto subscribed, do further Order,*

VIII. That the Warden of the Fleet do keep the Chapel of the Fleet in good repair, and take Care that Divine Service be performed, and the Sacrament of the Lord's Supper administered therein at the usual and proper Times, according to the Rites and Ceremonies of the Church of England; and all Prisoners are required to attend at the Times aforesaid, and not to absent themselves from the said Chapel without reasonable Cause.

IX. And it is hereby further Ordered, That no Chaplain of the Fleet, or any Clergyman being a Prisoner within the Walls or Rules of the Fleet, do presume to marry any Person without License within the Prison or Rules of the Fleet, and that the Warden and his Officers do use their utmost Diligence to prevent all such Marriages.

X. That the Warden do cause the Stocks to be kept up in the said Prison (as has been anciently practised) for the punishment of such Prisoners as shall blaspheme the Name of God, be guilty of prophane Cursing or

Swearing; or shall behave themselves in a disorderly manner.

XI. That no Prisoner do take Possession of any Chamber within the Prison, but with the Consent of the Warden, or his Deputy, or pull down any Partition, or make any other material Alteration there, without the Consent of the Warden, or his Deputy; but that the Disposal and Appointment of the Chambers or Rooms within the said Prison be in the Warden, or his Deputy, only, yet so as neither of them do turn any Prisoner out of Possession, who shall be rightfully possessed of a Chamber without reasonable Cause; and that every Prisoner on his or her Discharge, do deliver over to the Warden, his Deputy, or Chamberlain, the Key of his Chamber, and all the Warden's Furniture therein.

XII. That the Warden or his Deputy may turn any Prisoner out of his Chamber to the Common Side, that shall refuse or neglect to pay his or her Chamber-Rent for the Space of three Months; and that the Warden, or his Deputy, shall in such Case cause an Inventory to be made of the Prisoner's Goods and Effects (if any) signed by two Witnesses, and shall immediately deliver such Goods and Effects to such Prisoner; but the Warden may still detain the Person of such Prisoner, though discharged by the Plaintiff, or in any other manner, until his Arrears of Chamber-Rent shall be fully satisfied and paid.

XIII. That no Prisoner or other Person, shall keep any publick Room within the said Prison for selling any Victuals, Wine, Brandy, Punch, Beer, Ale or other Liquor, without Leave from the Warden, or his Deputy; and if any Prisoner or Prisoners, shall offend in the Premises, it shall be lawful for the Warden or his Deputy, to turn him, her, or them, out of their Room or Rooms to the Common Side; and the Warden and his Deputy are hereby required to take Care that good Order be kept in such publick Room or Rooms, as shall be allowed by either of them to be used as aforesaid.

XIV. That the Warden do take effectual Care that every Prisoner committed to his Custody be conveyed to the Prison of the Fleet, without being carried to any publick Victualling or Drinking-House, or the private House of any Tipstaff, Officer or Minister of the Fleet, or of any Tenant or Relation of his, without the free and voluntary consent of the Person or Persons so in Custody, and that no Garnish, or Money, shall be extorted by any Prisoner or Prisoners from any Person committed, for his coming into the said Prison.

XV. That the Warden do cause a Table of the Gifts and Bequests made for the Benefit of the Prisoners of the Fleet, expressing the particular Purposes, for which the same are given, to be fairly writ in a plain and legible Hand, to be hung up in the Hall of the

the said Prison, and that the Warden take care that no Prisoner, or Prisoners, be deprived or defrauded of his, her or their Shares, Dues or Dividends, of the Charities so given; and that no Cellar-man, Turnkey, or other Officer, or Servant of the Warden, shall have any Share or Part in any Charity given to the Prisoners, or bear any Office in the said Prison which may intitle him to any Power in the Receipt or Disposition of such Charity.

XVI. That every Prisoner who shall make Oath before one of the Judges of the Court, from whence the Process issued, upon which he or she shall be taken, or charged, or before a Commissioner empowered by such Court, that he or she is not worth five Pounds, and cannot subsist without the Charities belonging to the Prisoners of the Fleet, shall immediately be admitted to all Shares, Dividends, and Profits arising from such Charities.

XVII. That two Rooms marked 9 and 10 up the Chapel Stairs, shall be kept as an Infirmary for the Use of the Prisoners on the Common Side, who shall fall Sick of such Diseases as shall require their being removed, to prevent Infection, or for necessary Care and Relief; and that no Prisoner shall be obliged to lie in the same Bed with a diseased Person.

XVIII. That the Warden shall keep the Prison-House and Windows in good and necessary Repair, and keep the Drains, Bog-Houses, and Dunghill as clean and free from Stench and Noisomeness as possible.

XIX. That when any Prisoner dies within the said Prison, the said Warden shall forthwith give Notice of such Death to the Coroner, that the said Coroner may enquire, according to Law, how such Prisoner came by his Death; and that the said Warden shall detain the Body no longer than till the Coroner's Inquest have made their Inquisition, which shall be done with all convenient Speed, and that immediately afterwards the dead Body shall be delivered to the Prisoner's Friends or Relations, if they desire it, without Fee or Reward.

XX. That the Warden do not sue or procure to be sued out any Writ of *Habeas Corpus* to remove any Prisoner from the Prison of the Fleet to the Prison of the King's Bench.

XXI. That the Warden shall keep a Book in which all Commitments shall be fairly entered in the Words of such Commitment within fourteen Days after any Prisoner shall be committed.

XXII. That the Warden shall keep another Book, containing the Names of every Prisoner actually brought into the Fleet, and taken into the House, with the Name of the Party at whose Suit he shall be committed, and the Time when the Prisoner was brought to the Fleet, and received into the Prison,

specifying withall the Court or Judge by whose Authority he shall be committed.

XXIII. That every Tipstaff, to whom any Prisoner shall be delivered in Custody at a Judge's Chamber, shall keep a Book, containing the Name of such Prisoner, the Time when he was taken into Custody, to be signed by such Judge's Clerk; and such Judge's Clerk shall keep another Book, in which the like Entry shall be made, signed by the Tipstaff.

XXIV. That the Warden shall keep a Book in which *Memorandums* shall be entered of all Declarations delivered to the Turnkey or Porter, against any Prisoner in the Fleet Prison, containing the Names of the Parties, the Cause of Action, and the Time when such Declaration shall be delivered.

XXV. That the Warden shall keep a Book in which all Discharges of Prisoners shall be fairly entered, which Entry shall specify how such Discharge was made, whether by the Plaintiff, by *Superfedeas*, or otherwise, and such Entry shall be made within five Days after every Discharge.

XXVI. That the Warden shall keep a Book, in which, every Writ of *Habeas Corpus*, upon which the Prisoner shall not be committed or the Custody altered, with the Return of every such Writ of *Habeas Corpus*, shall be fairly entered.

XXVII. That all the Books before mentioned, except the Tipstaff's Book, shall be kept in the publick Office of the Clerk of the Papers of the Fleet; and that all Persons shall have Liberty to resort to them, and to take Copies as there shall be Occasion.

XXVIII. That no Clerk, Officer or Servant whatsoever, belonging to any Judge of this Court, shall directly or indirectly Demand, Receive or take any Gratuity, Fee or Reward, for or by Reason of any Petition, Complaint, or Application, that shall be made by any Prisoner or Prisoners of the said Prison, pursuant to, or founded upon any of the Rules and Orders herein before mentioned, or concerning any Mis-government in the Fleet.

XXIX. Lastly, that the said Warden and his Officers do treat the several Prisoners in his Custody with all Tenderness and Humanity, and that such Prisoners do behave themselves towards the Warden with that Submission and Regard which the Law requires.

R. Eyre, } } Alex. Denton,  
Rob. Price, } } J. Forrestue A.

Easter,



Easter, 3 Geo. II. 1730.

*Time of Pleading.*

**I**t is Ordered, That all Declarations in London or Middlesex, delivered pursuant to the Rule of this Court made the last Michaelmas Term, on Process returnable the first or second Returns of any Term, where the Defendant lives within twenty Miles of London, shall be delivered, with Notice that the Defendant or Defendants, plead to such Action within four Days after such Declaration delivered; and that all Declarations where the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from London, shall be delivered with Notice to plead within eight Days after such Declaration delivered. (a)

The Rule made in Michaelmas Term in the first Year of his present Majesty's Reign, to establish the Practice of this Court, upon the late Act of Parliament for preventing frivolous and vexatious Arrests, to the contrary thereof in any wise notwithstanding.

R. Eyre, } } Alex. Denton,  
Rob. Price, } } J. Fortescue A.

Trin. 3 & 4 Geo. II. 1730.

*Bail. (b)*

**I**t is Ordered, That from and after the last Day of this Term, if special Bail put in by the Defendant be (c) excepted to, the Defendant shall (d) perfect his Bail within four Days after Exception taken, in Default whereof the Plaintiff shall be at Liberty to proceed upon the Bail Bond.

By the Court.

Mich. 5 Geo. II. 1731.

*Filing Warrants of Attorney. (e)*

**W**hereas many Inconveniencies have happened to the Suitors in this Court, by Attornies neglecting to file their Warrants of Attorney, by which Neglect Judgments have been reversed, and Plaintiffs have lost their Debts; to prevent the like Inconveniencies for the future,

It is Ordered by this Court, That from and after the first Day of the next Term, no Judgment whatever (except final Judgments upon Posters, and Writs of Inquiry and Non-pross) shall be signed by any of the Prothonotaries of this Court, unless the Stamp of the Clerk of the Warrants of this Court be first impressed on the Paper whereon such Judgment is to be signed, whereby it may appear that Warrants of Attorney are duly filed.

By the Court.

Mich. 6 Geo. II. 1732.

*Transmitting Bails.*

**I** Whereas by a Rule of this Court, made in Hillary Term in the sixth Year of the Reign of the late King George the first, it was, among other Things, Ordered, That all Bails taken by Commissioners, pursuant to the late Act of Parliament, for taking special Bails in the Country, should be transmitted to the Lord Chief Justice, or to one of the Justices of this Court, viz. Every Bail taken within forty Miles of London, within ten Days after the Caption thereof; and every Bail taken above forty Miles from London, within twenty Days after the Caption thereof, unless all the Justices should be in their Circuits, and then as soon as any one of them should be returned out of his Circuit, and after such Transmission, should be forthwith delivered to, and filed with the proper Officer, to be entered upon Record, or otherwise it should be as no Bail; and the Plaintiff at Liberty to proceed on the Sheriff's Bond, as if no such Bail were ever put in. And whereas the said Rule hath proved ineffectual, and several Abuses are daily committed by Defendants Attornies suppressing such Bails, or neglecting to file the same by the Time limited in the same Rule, to the manifest Wrong and Injury of the Plaintiffs in such Actions, and in Contempt of this Court; now for the Remedying thereof,

It is Ordered, That from and after the last Day of this present Michaelmas Term, all Bails taken before any Commissioner in the Country, shall be transmitted and filed with the proper Officer, according to the said Rule, and that no such Bail shall be received or filed, unless the same be transmitted within the respective Times appointed by the (f) said Rule, without Leave of this Court first had and obtained.

By the Court.  
The

(a) Mic. 3 Geo. II. reg. 2. (b) Mich. 1654. stat. 11. Hil. 13 & 14 Car. II. Reg. 10th Mar. 5 W. & M. (c) Mic. 6 Geo. II. (d) i. e. Shall justify without new Exception. (e) Former Rules Trin. 35 H. VI. Hil. 14 & 15 Car. II. Hil. 2 & 3 Jac. II. Stat. 32 H. VIII. cap. 30. 28 Eliz. cap. 14. (f) Hil. 6 Geo. I. reg. 2. Former Rules 10th Mar. 5 W. & M. Mic. 13 Geo. I.



## The same Term, 1732.

Exception to Bail.

II. *Whereas it has been usually practised in this Court, in all Cases where Bail-Bonds have been taken, that if the same Bail taken by the Sheriff be put in above, that such Bail shall not be excepted against, but shall stand good and absolute; and whereas such Practice hath been found to be Inconvenient in many Instances;*

It is therefore Ordered by the Lord Chief Justice, and the rest of the Justices of this Court, that from and after the last Day of this present Term, in all Cases wherein Bail-Bonds shall be taken, and the same Bail is put in above, the Plaintiff may (a) except against such Bail.

By the Court.

## The same Term, 1732.

Demurrer Books. (b)

III. *Whereas great Delays have been occasioned by Defendants Attornies not delivering Demurrer-Books in due Time to the two puisne Judges of this Court;*

It is Ordered, That from and after the last Day of this Term the Plaintiff's Attorney shall deliver all the Demurrer-Books to the Lord Chief Justice and the rest of the Justices of this Court, and the Defendant's Attorney shall pay the Plaintiff's Attorney for two of the said Books, two Days at least before the Day appointed for arguing such Demurrer, and the Defendant shall not be heard by his Counsel, when the Cause comes on to be argued, unless such Payment be made as aforesaid.

By the Court.

## The same Term, 1732.

Signing Judgments. (c)

IV. *It is Ordered by the Lord Chief Justice and the rest of the Justices of this Court, That from and after the last Day of this Term, all Judgments signed in Causes depending in this Court, shall be signed in the Office of one of the Prothonotaries of this Court, and not elsewhere.*

By the Court.

4

## The same Term, 1732.

Bail.

V. *It is Ordered by the Lord Chief Justice, and the rest of the Justices of this Court, that from and after the last Day of this Term no Attorney of this or any other Court, or any Person practising as such, shall be Bail in any Suit or Action depending in this Court. (d)*

By the Court.

## The same Term, 1732.

Bail on Error.

VI. *Whereas the Rule made in Trinity Term in the third and fourth Years of his present Majesty's Reign, 'For obliging Defendants to perfect their special Bail within four Days after Exception taken, has answered the Ends for which it was made; but no Provision has been yet made, touching Bail put in on Writs of Error. (e)*

It is therefore Ordered, That in all Cases where Bail shall be filed on Writs of Error, such Bail shall likewise be perfected within four Days after Exception taken thereon, or in Default thereof, the Clerk of the Esquires of this Court shall (f) Non-pross such Writs of Error.

By the Court.

## The same Term, 1732.

Bail.

VII. *Whereas many Inconveniencies happen in Causes depending in this Court by reason that Sheriffs Officers, Bailiffs and other Persons concerned in the Execution of Process, offer themselves, and are permitted to be Bail in many Actions, and for great Sums of Money; now for Prevention of the like Mischief and Inconveniencies for the future;*

It is Ordered by the Lord Chief Justice and the rest of the Justices of this Court, that from and after the last Day of this present Term, no Sheriff's Officer, Bailiff, or other Person concerned in the Execution of Process, shall be permitted or suffered to become Bail in any Action or Suit depending in this Court.

By the Court.

Hil.

(a) Trin. 3 &amp; 4 Geo. II. 24. Eliz. 8. Mich. 1654. Hil. 1.

(b) East. 27 Car. II.

(c) Trin. 29 Car. II. reg. 5.

(d) Trin.

(e) Mic. 12 Geo. I.

(f) Trin. &amp; Mic. 28 Car. II.

## Hil. 7 Geo. II. 1733.

Notice fixed up in the Prothonotaries Offices.

Notices to Appear.

*Attornies are desired to observe, That in Notices to appear, to be served upon Defendants with Copies of Process, pursuant to the late (a) Act of Parliament, the Day of the Return of such Process must be inserted, although it happens to be upon a Sunday.*

## Hil. 8 Geo. II. 1734.

Prisoners in the Fleet.

*I. It is Ordered, That from and after the last Day of this Term, no Copy of a Declaration delivered at the Fleet Prison against any Prisoner there, shall be a sufficient Charge to hold such Prisoner to Bail, or to retain such Prisoner in Custody for want of Bail; Unless an Affidavit, that the Plaintiff's Cause of Action amounts to ten Pounds or upwards, be first made and filed in the proper Prothonotary's Office, and an Indorsement made by the said Prothonotary or his Deputy, upon such Copy of a Declaration, signifying the Sum of Money specified in such Affidavit, for which Sum so indorsed, Bail shall be required, and for no more.*

*By the Court.*

## The same Term, 1734.

Prisoners. (b)

*II. It is Ordered, from and after the last Day of this Term, in all Cases where a Prisoner in the Fleet or other Gaol or Prison is discharged, or ordered to be discharged by this Court, or any of the Justices thereof, by Superfedeas for want of Prosecution, and such Prisoner be afterwards arrested, or detained in Custody by Action of Debt, brought upon Judgment obtained in the Cause wherein such Prisoner was so discharged, or ordered to be discharged, that a common Appearance shall be accepted for the Defendant in such Action of Debt upon Judgment.*

*By the Court.*

## Hil. 8 Geo. II. 1734.

Notice fixed up in the Judges Chambers.

Bails.

*III. Bails may be taken (in the (c) Absence of the Filacer) on Stamp Parchment, upon bringing a true Abstract of the Writ.*

## Easter, 10 Geo. II. 1736.

Time of delivering Notices, &c.

*To ascertain the Practice of this Court concerning the Time for the Delivery and Demand of Declarations and Pleadings, and the serving of Notices of all Kinds,*

*It is Ordered by this Court, That from henceforth all Declarations and Pleadings shall be delivered, all such Demands made, and all Notices given before Nine of the Clock in the Evening.*

*And it is further Ordered, That the Rule made in Michaelmas Term in the 8th Year of his present Majesty be discharged.*

*By the Court.*

## Trin. 10 Geo. II. 1736.

Notice fixed up in the Offices.

Recoveries. Scire Facias.

*Attornies are desired to take Notice, That from and after the first Day of next Michaelmas Term, all Præcipe's for Recoveries, and Writs of Scire facias, be entered in the Office on the Remembrance of each respective Prothonotary to whom they belong, and that henceforth no Remembrances will be lent out for that Purpose. (d)*

## Trin. 10 &amp; 11 Geo. II. 1737.

Records.

*To prevent Delays in the Trial of Causes in the Circuits,*

*It is Ordered by all the Judges of England, That in every Cause to be tried before them*

(a) Stat. 5 Geo. II. cap. 27. Mic. 1 Geo. II. East. 3 Geo. II.  
Rule Trin. 1 W. & M. (d) Mic. 29 Car. II.

(b) East. 8 Geo. I.

(c) Former

them in their respective Circuits, the Writ and Record shall be entered together; and that no Record shall be received without the Writ.

|               |   |                 |
|---------------|---|-----------------|
| Wm. Lee,      | } | E. Probyn,      |
| J. Willes,    |   | J. Comyns,      |
| Ja. Reynolds, |   | J. Fortescue A. |
| F. Page,      |   | Wm. Thomson     |
| Alex. Denton, |   | W. Fortescue.   |
| Law. Carter,  |   |                 |

## Hil. 11 Geo. II. 1737.

*Affidavits.*

I. **I** is Ordered, That from and after the last Day of this Term, all Affidavits to be produced, read or made Use of before any of the Prothonotaries of this Court, upon Taxation of Costs, and other Matters to them referred, be filed by the Secondaries in the respective Prothonotary's Offices. (a)

|               |   |                 |
|---------------|---|-----------------|
| J. Willes,    | } | J. Comyns,      |
| Alex. Denton, |   | J. Fortescue A. |

## The same Term, 1737.

*Attachments of Privilege.*

II. **I** is Ordered, That from and after the last Day of this Term, every Attorney of this Court, who shall sue out any Attachment of Privilege against any Defendant, shall leave a *Præcipe* at the Prothonotary's Office, with the Defendants Names, not exceeding four in the whole, with the Return-Day thereto, and the Day of Signing the same, together with the Agent's or Attorney's Name who sues out the same; and that all and every such *Præcipe* shall be entered by the Prothonotaries, upon a Remembrance-Roll in their respective Offices, to be kept for that Purpose, without Fee or Reward; and that the Prothonotaries do not sign any Attachment of Privilege without such *Præcipe* be left in the Office at the Time of Signing thereof.

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|---------------|---|-----------------|
| J. Willes,    | } | J. Comyns,      |
| Alex. Denton, |   | J. Fortescue A. |

## The same Term, 1737.

*Forejudger.*

III. **I** is Ordered, That from and after the last Day of this Term, where any Bill shall be filed against any Attorney of

this Court, no Forejudger shall be entered against him, upon such Bill, for want of Appearance, if the Action be laid in *London* or *Middlesex*, and such Attorney resides within twenty Miles of *London*, until four Days after Notice in Writing of filing such Bill be given to such Attorney, or his Agent; or left at his usual Place of Abode, and a Rule given for such Appearance as usual; and if such Attorney resides above twenty Miles from *London*, or the Action be laid in any other Country than *London* or *Middlesex*, then no Forejudger shall be entered till eight Days after such Notice shall be given in such Manner as aforesaid, and a Rule to appear as aforesaid; the said Days to be exclusive of the Day of giving such Notice. (b)

|               |   |                 |
|---------------|---|-----------------|
| J. Willes,    | } | J. Comyns,      |
| Alex. Denton, |   | J. Fortescue A. |

## Trin. 13 Geo. II. 1739.

*Costs on not executing Enquiry.*

I. **I** is Ordered by the Court, That from and after the last Day of this Term, where Notice is given of the Execution of a Writ of Enquiry and not countermanded in time, the Defendant shall be intitled to Costs from the Plaintiff for not executing such Writ of Enquiry, in the same Manner, as a Defendant by the Course of the Court, is now intitled to Costs from a Plaintiff, who does not proceed to the (c) Trial of an Issue joined after Notice given.

|               |   |                 |
|---------------|---|-----------------|
| J. Willes,    | } | J. Fortescue A. |
| Alex. Denton, |   | W. Fortescue.   |

## The same Term, 1739.

*Posteas and Inquisitions.*

II. **I** is Ordered by the Court, That from and after the last Day of this Term, where final Judgment shall be signed upon *Posteas* or *Inquisitions* upon Writs of Enquiry, such *Posteas* or *Inquisitions* shall immediately be left with the Clerk of the Judgments of the respective Prothonotaries and shall not afterwards be taken out of the Office without Leave of the Court. (d)

|               |   |                 |
|---------------|---|-----------------|
| J. Willes,    | } | J. Fortescue A. |
| Alex. Denton, |   | W. Fortescue.   |

(a) Trin. 2 W. & M. reg. 2. (b) Trin. 21 Car. II. reg. 2. (c) Mich. 3 Geo. I. Mich. 1654. fol. 21.  
(d) Trin. 29 Car. II. reg. 5.

### Notice fixed up in the Offices.

Notice of Bill filed against an Attorney.

III. **T**HE Form of Notice of a Bill filed against an Attorney.

In the Court of Common Pleas at Westminster, between A. B. Plaintiff and C. D. one of the Attornies of the said Court, Defendant.

Take Notice, that a Bill of ——— Term is filed against you in Mr. Prothonotary ——— Office, at the Suit of the Plaintiff above-named, in an Action of Trespass upon the Case upon several Promises (or as the Cause is) to the Damage of 20l. and unless you appear thereto within ——— (a) Days (four or eight Days, as the Case requires) a Forejudger will be entered against you, Dated the ——— Day of ———

To Mr. C. D.  
the Defendant.

E. F. Attorney for  
the Plaintiff.

Easter, 13 Geo. II. 1740.

Affidavits.

I. **W**HEREAS by the General Rule and Practice of this Court, Affidavits taken before Attornies (as Commissioners) in Causes wherein they are concerned for the Parties in whose Behalf such Affidavits are made, have been deemed insufficient.

And whereas some Doubt hath arisen, whether such Rule and Practice should extend to Affidavits, made in Order to hold Defendants to Bail, before Process sued out, or to Affidavits of Service of Process where only a Common Appearance is required: In Order to settle the Practice for the future,

It is Ordered by the Court, That from and after the fifth Day of May in this present Term, all such Affidavits to hold the Defendant to Bail, or of the Service of Process where only a Common Appearance is required, may be sworn before the Plaintiff's Attorney being a Commissioner, and may be made use of for the Purposes aforesaid.

J. Willes. } } W. Fortescue.  
J. Fortescue A. } } T. Parker.

The same Term, 1740.

Notice of Trial.

II. **W**HEREAS by the antient (b) Rule of this Court in all Causes, in which there have been no Proceedings for above a Year, the Party who

desired to proceed again, must give a Term's Notice to the other.

And whereas some Doubts have arisen on the Construction of this Rule; to ascertain the same for the future, It is Ordered by the Court, That from and after the last Day of this Term, in all Cases in which there have been no Proceedings for four Terms, exclusive of the Term in which the last Proceeding was had, the Party who desires to proceed again shall give a Term's Notice to the other, of such Proceeding; that such Notice shall be given before the Eskin-day of the fifth or other subsequent Term; that a Judge's Summons, if no order be made thereupon, shall not be deemed a Proceeding, but that a Notice of Trial, tho' afterwards countermanded, shall be deemed a Proceeding within the meaning of this Rule.

J. Willes. } } W. Fortescue.  
J. Fortescue A. } } T. Parker.

Hil. 14 Geo. II. 1740.

Trials in the Circuits and entering Causes.

**W**HEREAS for regulating Trials by Nisi prius in the Circuits, an Order was made by all the Judges of England in Trin. Term, in the 10th and 11th Years of his present Majesty, 'That in every Cause to be tried before them in their respective Circuits, the Writ and Record should be entered together, and that no Record should be received without the Writ; which Order hath not fully answered the Intent thereof, but notwithstanding many Inconveniencies do still happen to the Suitors, by delaying, or putting off the Trials of their Causes.

Now in Order more effectually to prevent these Inconveniencies for the future,

It is Ordered by all the Judges of England, That no Writ and Record of Nisi Prius shall be received at the Assizes in any County in England, unless they shall be delivered to, and entered with, the Marshal before the first Sitting of the Court after the Commission-day, except in the Counties of York and Norfolk, and there the Writs and Records shall be delivered to, and entered with, the Marshal, before the first Sitting of the Court, on the second Day after the Commission day, otherwise they shall not be received. And that every Cause shall be tried in the Order in which it is so entered, without any Preference or Delay, unless it shall be made out to the Satisfaction of the Judge in open Court that it is impracticable or inconvenient so to do; who thereupon may make such Order for the Trial of the Cause to put off, as to him shall seem just.

X

And

(a) Note; By the Rule of Court Hil. 11 Geo. II. reg. 3. if the Action be laid in London or Middlesex, and the Defendant resides within 20 Miles of London, the Notice to appear is to be within four Days; and if the Defendant resides above 20 Miles from London, the Notice to appear is to be within eight Days.

Notices may be served upon the Defendant or his Agent, but Forejudgers cannot be signed till four or eight Days (as the Case requires) exclusive of the Day of Notice.

(b) Reg. Mich. 1654. sec. 21.

*Trin. 14 & 15 Geo. II. Rules and Orders in C. B.*

And it is further Ordered, That a List of the Causes when so entered as aforesaid shall be made by the Marshal, and forthwith fixed up in some publick Place in the *Nisi Prius* Court, there to remain during the whole Time of the Assizes.

|                   |   |                        |   |                     |
|-------------------|---|------------------------|---|---------------------|
| <i>W. Lee.</i>    | { | <i>Law. Carter.</i>    | { | <i>T. Parker.</i>   |
| <i>J. Willes.</i> |   | <i>J. Fortescue A.</i> |   | <i>M. Wright.</i>   |
| <i>E. Probyn.</i> |   | <i>W. Fortescue.</i>   |   | <i>Ja. Reynolds</i> |
| <i>E. Page.</i>   |   |                        |   | <i>Tbo. Abney.</i>  |

*Trin. 14 & 15 Geo. II. 1741.*

*Warrants of Attorney.*

**T**O prevent Frauds and Impositions in the Execution of Warrants of Attorney for confessing Judgments in this Court,

It is Ordered, That from and after the first Day of next *Michaelmas* Term, every such Warrant of Attorney shall be read over by the Person who is to execute the same, or by some other Person to him before the execution thereof; and that if Judgment shall be entered upon any such Warrant of Attorney which shall be executed after the first Day of next *Michaelmas* Term, and which shall not be so read over as aforesaid, such Judgment, upon Motion may be set aside as irregular.

|                        |   |   |                      |
|------------------------|---|---|----------------------|
| <i>J. Willes.</i>      | { | { | <i>W. Fortescue.</i> |
| <i>J. Fortescue A.</i> |   |   | <i>T. Parker.</i>    |





















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R U L E S,  
ORDERS and NOTICES,

I N

The Court of King's Bench.

From the Second of King JAMES I. to  
*Hilary* Term the Fifteenth of  
King GEORGE II. 1741.

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*Examined by the* ORIGINALS;

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To which are now added, many useful RULES of Court,  
omitted in former Collections, and a Translation, in  
opposite Columns, of the RULES heretofore Printed in  
Latin :

Together with NOTES, REMARKS and REFERENCES :

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And a new Alphabetical TABLE to the Whole.

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In the SAVOY :

Printed by HENRY LINTOT, (Assignee of *Edward Sayer, Esq;*) for  
*J. Stephens*, at the *Hand and Star* in *Fleetstreet*; *J. Woxall*, at the *Dove*  
in *Bell-Tard*, near *Lincoln's Inn*; *C. Ward* and *R. Chandler*, at the *Ship*  
without *Temple-Bar*; *J. Wood*, at the End of *Pope's Head Alley* in *Cornhill*;  
and *C. Waller*, in the *Middle-Temple Cloysters*. M.DCC.XLII.





To the Right Honourable  
*Sir* WILLIAM LEE, *Kt.*  
Lord Chief Justice of the Court  
of King's Bench,

A N D

The Honourable the JUSTICES of the  
same Court,

**T**HIS Collection of the RULES and ORDERS  
is humbly Dedicated by their Lordships

*Most Obedient, and*

*Most Humble Servants,*

The EDITORS.

1. The first part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the Corporation.

2. The second part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the Corporation.

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11. The eleventh part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the Corporation.

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# RULES and ORDERS

## OF

# The Court of King's Bench.

*Die Mercurii prox'  
post Tres Septi-  
manas Sanctæ  
Trin. Anno 2 Jac.  
primi Regis.*

Trin. 2 Ja. I.  
1604.

leadings.

**O** Rdinatum est per Curiam in plena curia quod nullus Attornatus seu Clericus attendens hic in Curia de heretibus alicui Attornato vel Clerico attendenti hic in Curia vel tunc alie Personæ vel recipiet ab aliquo Attornato vel Clerico attendente in Curia hic et ab aliquo alia persona aliquod placitum opponendum in Officio Clerici papyri vel coiam ejusdem placiti rursus placitum illud sit impositum in eodem Officio Clerici Papyri & quod talis Coia postquam Placitum illud sit impositum facta veris per Clericum in predicto Officio Clerici papyri attendentem & signata cum manu uni Clerici ibidem attendentis sub pena quod quilibet Attornatus vel Clericus in Curia hic attendens forisfaciet pro prima Offensa sua sic commissa 10s. solvendo Pixidi ad usum Pauperum; pro secunda Offensa sua sic commissa

**I. IT** is Ordered by this Court in full Court, That no Attorney or Clerk attending here in Court shall deliver to any Attorney or Clerk attending here in Court, or to any other Person, or shall accept from any Attorney or Clerk attending here in Court or from any other Person, any Plea to be put into the Office of the Clerk of the Papers or a Copy of such Plea, before the same Plea be left in the Office of the Clerk of the Papers; and that such Copy after such Plea is left shall be made by the Clerk attending in the aforesaid Office of the Clerk of the Papers and signed with the Hand of a Clerk attending there, under the penalty, that every Attorney or Clerk attending here in Court shall forfeit for his first Offence so committed 10s. to be paid to the Box for the use of the Poor; 20s. for the second Offence so committed, in like manner to be paid to the Box for the use of the Poor; and that every such At-

*20s. similiter solvendo Pixidi ad usum Pauperum; & pro tertia Offensa sua sic commissa quod talis Attornatus vel Clericus expelletur a Curia.*

torney or Clerk shall for the third Offence so committed be expelled the Court. (a)

*Eodem Die.* The same Term,  
1604.

**II.** **O** Rdinatum est per Curiam in plena Curia quod quilibet Attornatus & Clericus attendens hic in Curia qui recipiet aliquod Postea ab aliquo Clerico Assignatum vel aliquo alio Officiario pro Retorno Postea assignato notabit quodlibet hujusmodi Postea sic retortum cum Manu Clerici pro eisdem le Postea recipiendis hic in Curia assignati infra duos Dies postquam talis Postea venit ad Manum hujusmodi Attornati seu Clerici hic in Curia attendentis sub pena quod quilibet Attornatus vel Clericus in Curia hic attendens forisfaciet pro prima Defalta sua in hac parte 10s. solvendo Pixidi ad usum Pauperum; pro secunda Defalta sua in hac parte 20s. similiter solvendo Pixidi ad usum Pau-

*Postea.*  
**II. IT** is Ordered by the Court in full Court that every Attorney and Clerk attending here in Court who shall receive any Postea from any Clerk of Assigns or any other Officer appointed to return Postea shall get every such Postea so returned, marked with the Hand of the Clerk appointed to receive Postea here in Court, within two Days after such Postea comes to the Hands of such Attorney or Clerk attending here in Court, under the Penalty that every such Attorney or Clerk attending here in Court, shall forfeit for his first default in this behalf 10s. to be paid to the Box for the use of the Poor; for his second default in this behalf 20s. in like manner to be paid to the Box for the use of the Poor, [a]

(a) Further enforced by the Rules Trin. 16 Car. II. and Mich. 2 W. & M.

*Pauperum; Et pro tertia Defalta sua quod talis Attornatus vel Clericus expelletur a Curia.*

and for the third default that every such Attorney or Clerk shall be expelled from the Court. (a)

*Domini Regis hic pro tempore existenti pro Custodia hujusmodi Denariorum summae pro quolibet Centum Libris 20 s. Et sic secundum Ratam illam solvetur pro qualibet majore aut minore summa pro Custodia inde tam pro Denariorum summa in forma predicta inferenda quam secundum Ratam predictam pro Denariorum summa modo in Curia hic remanente Et pro Denariorum summa subter summam 10 l. solvetur pro hujusmodi Denariorum summa 2 s. prout solvi diu usitat fuit.*

Lord the King here for the Time being, for the keeping of such Sum of Money 20s. for every Hundred Pounds, and so according to that rate shall be paid for every greater or lesser Sum for the keeping thereof, as well for a Sum of Money to be brought in, in form aforesaid, as for a Sum of Money now remaining in Court, and for a Sum of Money under 10 l. the Sum of 2s. shall be paid for such Money as used to be paid formerly.

*Die Martis proximo post Octavas Purbeate Mariæ Anno 3 Jac. primi Regis.*

Hil. 3 Ja. I.  
1605.

#### Rules.

**O**rdinatum est quod si aliqua Causa mota fuerit prius in Curia in Presentia Consilii ambarum Partium Et Curia tunc superinde ordinaverit inter easdem Partes si eadem Causa iterum moveatur contra eandem Regulam sic per Curiam datam tunc fiat Attachmentum versus eum qui procuraret eandem Motionem fieri contra Regulam Curie sic prius factam, Et quod Consilium qui sic movet habens Notitiam de eadem priori Regula non audiat hic in Curia in aliqua Causa eodem Termine quo Causa illa sic mota fuerit contra Regulam Curie in forma predicta.

**I**t is Ordered, That if any Cause shall first be moved in Court in the presence of the Counsel of both Parties, and the Court shall then thereupon Order between those Parties, if the same Cause shall again be moved contrary to that Rule so given by the Court, then an Attachment shall go against him who shall procure that Motion to be made contrary to the Rule of Court so first made, and that the Counsel who so moves having Notice of the said former Rule, shall not be heard here in Court in any Cause in that Term in which that Cause shall be so moved contrary to the Rule of Court in Form aforesaid.

*Die Mercurii proximo post quinden Pasthe Anno 6 Jacobi primi Regis.*

Easter, 6 Ja. I.  
1608.

**O**rdinatum est per Curiam quod quilibet Vic ante finem cujuslibet Terminii aut immediate post finem cujuslibet Terminii deliberebunt Et retornabunt in Curiam omnia brevvia de Latitat Et brevvia superinde extra hanc Curiam emanantia eis Et eorum cuilibet directa Et deliberata Et super Retornam Et Deliberationem eorundem brevviu aut eorum alicujus quilibet Vicecomes sic retornans brevvia predicta prestabit Sacramentum in Curia hic quod brevvia predicta per ipsum sic tunc deliberata Et retornata fuerunt omnia brevvia ei directa Et deliberata Et que ad Manus devenerunt Et si aliquis Vicecomes fecerit Defaltam in hac parte tunc quilibet Vicecomes sic Defaltam faciens

**W**rits. Sheriff. **I**t is Ordered by the Court that every Sheriff before the End of every Term, or immediately after the End of every Term, shall deliver and return into Court all Writs of Latitat and Writs thereupon issuing out of this Court to them and every of them directed and delivered, and upon the Return and Delivery of those Writs or any of them, every Sheriff so returning the Writs aforesaid shall make Oath here in Court, that the aforesaid Writs by him so then delivered and returned, were all the Writs directed and delivered to him, and which came to his Hands; and if any Sheriff shall make Default in this behalf, then every Sheriff so making Default shall attend the Court here, to expect the Judgment of the Court here for his

*Die Lune proximo post Crastin Ascensionis Domini Anno 5 Jacobi primi Regis.*

Hil. 5 Ja. I.  
1607.

#### Bringing Money into Court.

**O**rdinatum est per Curiam in plena Curia quod quolibet Pars ad cujus Requisitionem aliqua denariorum summa inferentur in Curiam hic custodienda solvetur Secundario Capitalis Clerici

**I**t is Ordered by the Court in full Court, That every Party at whose Request any (b) Sums of Money shall be brought into Court here to be kept, shall pay to the Secondary of the Chief Clerk of our

(a) See Hil. 1657. (b) Note: This is often practised where a Tender cannot be pleaded, and therefore the Defendant moves the Court that upon Payment of a certain sum so much may be struck out of the Declaration and the Plaintiff proceed further at his Peril.

aus attend' Curiam hic ad-expellendum. Judicium Curie hic pro Contemptu suo in hac parte facto.

his Contempt in this behalf committed.

Die Veneris proximo post Menssem Sancti Michaelis Anno 7 Jacobi primi Regis.

Mich. 7 Ja. I. 1609.

Bail.

**O**rdinatum est per Curiam quod nullus Attornatus imponet aliquod Ballium pro aliquo Defendente quocunque in aliqua Causa quacunque antequam hujusmodi Attornatus pro tali Defendente de prius Notitiam Attornato pro Querente in Causa qua idem Defendens traditur in Ballium sub pena expulsiōis ab Officio.

**I**t is Ordered by the Court, That no Attorney shall put in any Bail for any Defendant whatsoever, in any Cause whatsoever, before such Attorney for such Defendant (a) first give Notice to the Plaintiffs Attorney, in the Cause for which the said Defendant shall be delivered unto Bail, upon pain of Expulsion from his Office.

Die Veneris proximo post Crastin' Sancte Trinitatis Anno 9 Jac. primi Regis.

Trin. 9 Ja. I. 1611.

Audita Querela.

**O**rdinatum est quod nullum Breve de Audita Querela pro aliqua Causa quacunque allocatur nec Ballium superinde capiatur nisi hic in publica & aperta Curia & per Specialem motionem hic prius factam & Regula superinde intratur.

**I**t is Ordered, That no Writ of Audita Querela for any Cause whatsoever be allowed, nor Bail thereupon taken, unless here in publick and open Court and by special Motion here first made and a Rule thereupon entered.

Die Lune proximo post Crastin' Ascensionis Domini Anno 13 Jac. primi Regis.

Easter, 13 Ja. I. 1615.

Attorneys.

**Q**UIA datum est Curie Domini Regis coram ipso Rege intelligi per Motionem in plena Curia ex gravi Querela Attornatorum hujus Curie quod cum iidem Attornati sunt Attornati de Recordo in Curia hic in Recordo nominati & sic fuerunt ab antiquo & attendentes coram Justiciariis ad Affisas capiendas in diversis Circuitibus ad imponendum Recordum & ad comparandum pro Clientibus ad Affisas in talibus Recordis in quibus ipsi nominantur Attornati coram eisdem Justiciariis ad Affisas & sunt Attornati de Recordo in eisdem Recordis de Nisi prius & parati ad informandum Consilium Clientium & Magistrorum suorum in ea parte ibidem quod iidem Attornati hujus Curie Compulsi fuerunt per Marefchallum diversorum Justiciariorum ad Affisas solvere dictis Marefchallis pro imponendo Recordum de Nisi Prius pro Querentibus & comparando pro Defendentibus in talibus Recordis in quibus ipsi sunt & nominantur Attornati diversa indebita & majora & graviora feoda & pecuniarum summas quam Attornati Curie de Banco in talibus Casibus persolverunt & persolvere usi fuerunt & quod eisdem Attornatis hujus Curie non allocantur Feoda sua pro Attendentibus suis ad Affisas predictas in Derogationem Dignitatis hujus Curie ac

**B**Ecause the Court of the Lord the King before the King himself is informed by Motion in full Court, upon the grievous Complaint of the Attorneys of this Court, that whereas those Attorneys are Attorneys of Record in the Court here, in the Records named, and so have been of old, and attending before the Justices of Assise, taken in divers Circuits to put in Records and to appear for Clients at the Assises, in such Records in which they were named Attorneys before those Justices at the Assises, and are Attorneys in the same Records of Nisi Prius, and prepared to inform the Counsel of their Clients and Masters in that behalf there, that the said Attorneys of this Court have been compelled by the Marshalls of divers Justices of Assise to pay to the said Marshalls for putting the Records of Nisi Prius for the Plaintiffs, and appearing for the Defendants in such Records in which they are, and are named Attorneys, divers undus and greater and more grievous Fees and Sums of Money than the Attorneys of the Court of Common Pleas have paid and used to pay in such Cases, and that the said Attorneys of this Court are not allowed their Fees, for their Attendancies at the Assises aforesaid, in Derogation of the Dignity of this Court, and to the great Damage of the said Attorneys of this Court, and their Clients.

ad

[b]

And

(a) This is obsolete, for now it is sufficient to give Notice of the Bail after they are put in.



ad grave Dampnum  
dictorum Attornatorum  
huius Curie & eorum  
Clientium.

Et quia satis constat  
Curie Domini Regis  
hic quod fuerunt Attor-  
nati huius Curie ab  
antiquo & Warranta  
Attorn' quolibet Termi-  
no recipiuntur pro eis ac  
quod equa Iustitia eis  
in hac parte fieri possit  
Datum est intelligi per  
Curiam dicti Domini  
Regis hic quod posthac  
nullus Attornatus huius  
Curie pro Impositione  
alicujus Recordi de Ni-  
si prius coram aliquo  
Iusticiario ad Affisas  
in quo ipse nominabitur  
Attornatus in Recordo  
& attendens fuerit ad  
Affisas circa Triationem  
salis Recordi solvat seu  
solvere compulsi fuerit  
plus sive majorem sum-  
mam Pecunie quam  
Attornati de Comuni  
Banco apud Westmonas-  
terium in talibus Cas-  
ibus solverunt & solvere  
consueverunt sed quod  
Feoda Attorn' huius Cu-  
rie eis allocentur ad  
Affisas predictas.

And because it sufficiently  
appears to the Court of the  
Lord the King here, that  
there were Attorneys of this  
Court of old, and that War-  
rants of Attorney have been  
received in every Term for  
them, and that equal Ju-  
stice may be done them in  
this behalf, It is Ordered,  
by the Court of the said  
Lord the King here, that  
hereafter no Attorney of  
this Court, for the putting  
in any Record of Nisi prius  
before any Justice of Assise  
wherein he shall be named  
Attorney in the Record and  
shall be attending at the  
Assises about the Trial of  
such Record, shall pay or be  
compelled to pay more or a  
greater Sum of Money than  
the Attorneys of the Court  
of Common Pleas at West-  
minster in such Cases pay  
and have been accustomed  
to pay; but that the Fees  
of the Attorneys of this  
Court shall be allowed them  
at the Assises aforesaid.

Die Lune proxi-  
mo post Crastin'  
Ascensionis Do-  
mini Anno 17 Ja-  
cobi primi Regis.

Easter, 17 Ja. I.  
1619.

#### Judgments.

Ordinatum est per  
Curiam hic in  
plena Cur' quod ubi a-  
liquod Judic' in aliqua  
Causa quacunque hic in  
Cur' Domini Regis co-  
ram ipso Rege imposse-  
rum reddit' fuerit ubi  
Debitum & Dampna  
attinger' ad summam  
20 l. seu amplius quili-  
bet Attorn' in tali Cau-  
sa fecerit vel fieri procu-  
rabit quandam Notam  
in pergamene vel papir'  
continen' Nomina &  
Cognomina Partium  
Quer' & Defend' &

It is Ordered by the  
Court here in full Court,  
That where any Judgment  
in any Cause whatsoever  
here in Court of the Lord  
the King before the King  
himself, shall hereafter be  
given where the Debt and  
Damages amount to the  
Sum of twenty Pounds or  
more, that every Attorney  
in such Cause shall make or  
cause to be made a Note  
in Parchment or Paper con-  
taining the Names and Sur-  
names of the Parties, Plain-  
tiffs and Defendants, and

Debit' & Dampn' re-  
cuperand' una cum Ter-  
mino & Rotulo ubi tale  
Judic' fuerit intrat' in  
hac qua sequitur For-  
ma, viz.

A. B. ad Se'iam C. D.  
Deb' 20 l.  
Pasch. 17 -- Rot. 302.  
A. J. & B. R. ad  
Se' N. S.  
Dampn' 23 l. 13 s. 4 d.  
Hil. -- 15 Rot. 100.

B. Attorn'.

Et huiusmodi Notam  
facta' deliberabit L. C.  
uni Cleric', &c. &  
cuiuslibet alii Clerico bu-  
jusmodi Locum suum  
imposuerum exercenda'  
per ipsum in quodam  
Libro eodem proposito  
providenda' registranda'.

the Debt and Damages to  
be recovered, together with  
the Term and Roll where  
such Judgment shall be en-  
tered in the following Form:

C. D. at the Suit of A. B.  
Debt 20 l.  
--- Term --- Roll ---  
C. D. and E. F. at the Suit of  
A. B.  
Damages 23 l. 13 s. 4 d.  
Hillary 15 --- Roll ---

B. Attorney.

And shall deliver such Note  
so made to L. C. one of the  
Clerks, &c. and to every o-  
ther Clerk who for the future  
shall execute his Place, to be  
regitred by him in a certain  
Book to be provided for that  
purpose. (a)

Die Martis proxi-  
mo post Octab.  
Pur' beate Ma-  
rie Anno 19 Ja-  
cobi primi Regis.

Hil. 19 Ja. I.  
1621.

#### Sheriffs of Wales.

CUM Questio facta  
fuit si omnia Bre-  
via judicial' super Ju-  
dic' in Cur' Domini Re-  
gis coram ipso Rege red-  
dita emanant' pro Exe-  
cutione eorundem curre-  
rent & exequi possent  
infra separata Com'  
Wallie & superinde  
praed' Cur' Domini Re-  
gis coram ipso Rege per  
Rob'tum Heath Mil'  
Solicitor' Domini Re-  
gis nunc mota existens  
quia dictae Cur' dicti  
Domini Regis coram  
ipso Rege super matura  
Deliberatione & Consi-  
deratione diversorum  
Preceden' in hoc Casu  
ante hac fact' manifeste  
liquet quod usualis &  
constans Consuetudo Cur'  
praed' hacten' fuit &  
est quod omnia huiusmo-  
di Brevia infra Walli-  
am possint & debent  
legitime exequi. Ordinatur  
est quod omnia huiusmo-  
di Brevia judicial' fieri  
& dirigi possint & de-  
beant

Whereas a Question hath  
been made, whether all  
judicial Writs issuing upon  
Judgment given in the  
Court of our Lord the King  
before the King himself, for  
Execution thereof should run  
and might be executed with-  
in the several Counties of  
Wales, and thereupon the a-  
foresaid Court of the Lord  
the King before the King  
himself, being now moved by  
Sir Robert Heath, Kt.  
Solicitor of the Lord the  
King, because it manifestly  
appears to the said Court of  
the said Lord the King,  
upon mature Deliberation  
and Consideration of divers  
Precedents in this Case hereto-  
fore made, that the usual  
and constant Course of the  
Court aforesaid hitherto hath  
been and is, that all such  
Writs may and ought to be  
lawfully executed within  
Wales. It is Ordered that  
all such judicial Writs may  
and ought to be made and  
directed

(a) See Easter, 1657. and Mich. 5 Anne.

bent Vic' præd' separat' Com' Walliæ & per e-  
osdem Vic' pro Tempore  
existen' exequi debent  
sicut in omnibus al'  
Com' Angliæ Periculis  
suis incumben'.

directed to the Sheriffs of the  
said several Counties of Wales  
and ought to be executed by  
those Sheriffs for the Time  
being, at their Peril as in all  
other Counties of England.

## RULES and ORDERS OF THE Court of King's Bench.

Die Martis proximo  
post Octab' Pur' Anno 8 Car-  
oli primi Re-  
gis.

Hil. 8 Car. I.  
1632.

### Declarations.

**O**rdinatum est quod null' Philizar' Cleric' vel Attorn' Cur' super Comparenc' alicuj' Defend' in aliquo Bre-  
vi original' prosequetur faciet intrabit vel deli-  
berabit aliquam Nar-  
rationem varian' in  
Materia ab original'  
Breui primo prosecut'  
nec recipiet aliquam ta-  
lem Narrationem sic  
varian' super Compa-  
renc' sua super tali Bre-  
vi original' sine speciali  
Regula in aperta Cur'  
prius obtenta nec prose-  
quetur faciet intrabit  
sive deliberabit alicui  
alii Philizar' Clerico  
sive Attorn' Cur' com-  
paren' super aliquo Bre-  
vi original' nec recipiet  
de aliquo Philizar' Cle-  
rico sive Attorn' plur'  
narr' quam unam sub  
Pena Forisfacturæ Of-  
ficii cujuslibet Philizar'  
sic offendens & expulsi-  
onis a Cur' ac cujuslibet  
alii Clerici vel At-  
torn' Cur' sic offendens  
expulsion' a Cur'.

**I**t is Ordered, That no  
Philizar, Clerk or Attor-  
ney of the Court, upon the  
Appearance of any Defen-  
dant in any original Writ do  
Prosecute, make, enter or  
deliver any Declaration va-  
rying in Matter from the  
original Writ first prosecu-  
ted, nor shall receive any  
such Declaration so varying,  
upon his Appearance upon  
such original Writ, without a  
special Rule in open Court  
first obtained; nor shall  
prosecute, make, enter or  
deliver to any other Philizar,  
Clerk or Attorney of the  
Court appearing upon any  
original Writ, nor shall re-  
ceive from any Philizar,  
Clerk or Attorney, more  
Declarations than one upon  
Penalty of Expulsion, and  
forfeiting the Office of e-  
very Philizar so offending,  
and Expulsion from the Court  
of every other Clerk or At-  
torney so offending. (a)

(a) Trin. 12 W. III.

Die Martis prox' post tres Septiman' Paschæ  
Anno 9 Caroli primi Regis, 1633.

### Palace Court.

**O**rdinatum est quod separat' Record' Judic' hic in Cur'  
afflat' super Breuib' de Errore quæ non intrantur de  
Recordo emendabuntur in stilo Cur' & sicut Cur' Palatii  
Regis Westm' tenent' apud Southwerk in Com' Surr' infra  
Jurisdictionem istius Cur' die Veneris scilicet tali Die Anno  
Regni Domini nostri Caroli Dei Gratia Angliæ Scotiæ  
Franciæ & Hiberniæ Regis Fidei Defensor, &c. octavo  
coram Thoma Edmonds Mil' Thesaurario Hospitii Domini  
Regis Edmundo Verney Mil' Mariscallo Hospitii præd' &  
Edwardo Herbert Ar' Senello Cur' præd' Judicib' Cur' ill'  
Virtute Literarum Patentium dicti Domini Regis nunc ge-  
ren' Dat' apud Canbury 12 Die Julii Anno Regni sui  
Sexto. (b)

Die Veneris in  
Crastino Ascensio-  
nis Domini Anno  
11 Caroli primi  
Regis.

Easter, 11 Car. I.  
1635.

### Certiorari.

**O**rdinatum est  
quod nullum Bre-  
ve de Certiorari super  
aliquo Breui de Errore  
prosecut' vel fact' erit  
per aliquem Clericum  
vel Attorn' Cur' post  
aliquod Breve de Certi-  
orari in eadem Causa  
prius prosecut' & retor-  
nat' sine Motione per  
Consil' in Curia.

**I**t is Ordered, That no  
Writ of Certiorari upon  
any Writ of Error shall be  
sued out or made by any  
Clerk or Attorney of the  
Court, after a Writ of Cer-  
tiorari in the same Cause  
hath been already sued out  
and returned, without Mo-  
tion in Court by Counsel.

Die Sabbati proximo  
post Octab' Pur' Anno 14  
Caroli primi Re-  
gis.

Hil. 14 Car. I.  
1638.

### Prisoners.

**O**rdinatum est  
quod quilibet  
Prisonar' qui removea-  
tur a Custod' Gardia-  
ni de le Fleet Prisonæ  
Mar' huj' Cur' virtute  
Brevis de Habeas Corp'  
remanebit in Prisona  
Mar' præd' & non  
deliberetur quousq' sol-  
vit Feoda Prison' Gar-  
dian' de le Fleet præd'  
debita.

**I**t is Ordered that e-  
very Prisoner who shall  
be removed from the Custody  
of the Warden of the  
Fleet, to the Prison of the  
Marshalsea of this Court by  
Virtue of a Writ of Habeas  
Corpus shall remain in the  
Prison of the Marshalsea a-  
foresaid, and shall not be set  
at Liberty until he hath paid  
the Prison Fees due to the a-  
foresaid Warden of the Fleet.

Dis

(b) Obsolete.

Die Jovis prox'  
post Crastin' A-  
nimar' Anno 15  
Caroli primi Re-  
gis.

Mich. 15 Car. I.  
1639.

Philizar.

**O** Rdinatum est per Cur' quod omnes & singuli Philizar' huj' Cur' in propr' personis suis comparebunt in secundo Retorn' prox' Termin' ad intenden' Officium suum & ad ostendend' Causam de eorum non Attendend' aliter Officium eorum sic delinquen' seiscietur.

**I**T is Ordered by the Court, That all and singular the Philizars of this Court shall appear in Person on the second Return of the next Term to take care of their Officers, and to shew Cause of their Non-attendance, otherwise the Office of those so making Default shall be seized.

Die Lune proximo  
post tres Septi-  
man' Sancti  
Mich. Anno 17  
Car. primi Regis.

Mich. 17 Car. I.  
1641.

Paper Books. (a)

**O** Rdinatum est quod in omnibus Materiis in Lege Special' Verdict' & Brevib' de Error' super Materiis in Lege vel Special' Verdict' ac similiter in omnibus al' Causis in Cur' dependend' in Libro Cleric' Pap' intrat' vel intrand' ubi Libri Justic' deliberari debent quod secundum antiquum Cursum Cur' immediate post Lectionem Recordi Libri Capitali Justic' & Justic' sen' per Quer' vel ejus Attorn' & al' Justic' per Defend' vel ejus Attorn' deliberari debent Et si una Pars vel ejus Attorn' Libros in Forma præd' deliberare neglexerit tunc altera Pars vel ejus Attorn' tales Libros deliberari omisso ad Custagiam Partis que ita neglexerit deliberari debet ante aliquod Argumentum in eadem Causa ad Barram per Consil' fuit fact'.

**I**T is Ordered, That in all Matters of Law, special Verdicts and Writs of Error upon Matters in Law or special Verdicts, and likewise in all other Causes depending in Court entered, or to be entered in the Book of the Clerk of the Papers where Books ought to be delivered to the Judges, that according to the ancient course of the Court immediately after the reading of the Record, Books ought to be delivered to the Chief Justice and senior Justice by the Plaintiff or his Attorney, and to the other Justices by the Defendant or his Attorney; and if one Party or his Attorney shall neglect to deliver the Books in form aforesaid, then the other Party or his Attorney ought to deliver such Books omitted, at the Cost of the Party who shall so neglect, before any Argument in that Cause shall be made at Bar by Counsel.

Die Lune proximo  
post tres Septi-  
man' Sancti  
Trin. Anno 20  
Car. primi Regis.

Trin. 20 Car. I.  
1644.

Clerk of the Errors.

**O** Rdinatum est per Cur' si Cleric' Error' per Capital' Justic' huj' Cur' ap-punctuat' non recipiet Breve de Error' & faciet ea quæ adinde per-tinent sicut consuevit tunc Cleric' Thesaurar' huj' Cur' faciet in ea parte quod Cleric' The-saurar' ill' Temporibus præteritis fuit præd' Cleric' Error' in ea parte facere consuevit secundum Legem & Con-suetud' huj' Cur'.

**I**T is Ordered by the Court, That if the Clerk of the Errors appointed by the Chief Justice of this Court, shall not receive a Writ of Error and do those things which appertain thereunto as hath been accustomed, then the Clerk of the Treasury of this Court shall do in that behalf what the Clerk of the Treasury in Times past, or the aforesaid Clerk of the Errors hath used to do in that behalf, according to Law and the course of this Court.

Die Mercur' pro-  
ximo post tres Sep-  
timan' Sancti  
Trin. Anno 21  
Car. primi Regis.

Trin. 21 Car. I.  
1645.

**O** Rdinatum est quod Vic' Com' Cest' retorn' omnia Brevia a Cur' hic emanant' ei directa secundum Retorn' eorumdem Brevium sub Pen-a 50l.

**I**T is Ordered that the Sheriff of the County of Chester, shall return all Writs issuing out of this Court to him directed, according to the return of those Writs under the Penalty of 50l.

Die Jovis proximo  
post Octab' Sancti  
Martini Anno  
21 Caroli primi  
Regis.

Mich. 21 Car. I.  
1645.

**O** Rdinatum est quod Attorn' pro Quer' in qualibet Actione in hac Curia qua bon' Ballium de Jure requireretur tempore oblationis Ballii ill' attendat super Notic' ei dat' coram aliquo Justic' huj' Cur' ad Ballium ill' sic oblat' ac-

**I**T is Ordered that the Attorney for the Plaintiff in every Action in this Court, in which good Bail is by Law required at the time of offering such Bail, shall upon Notice to him given attend before any Justice of this Court to accept of, or other-

(a) See Easter, 33 Car. II. and East. 2 Ja. II.

*acceptand' vel aliter ad capiend' exceptionem sub Pœna extraponend' e Rotulo.*

otherwise take exception to the Bail so offered, under the penalty of being struck out of the Roll. (a)

*ric' Philizar' vel Attorn' pro Defalta affiliationis Ballii præd' extraponantur e Rotulo.*

Philizars or Attorneys, for default of filing of the Bail aforesaid, shall be put out of the Roll. (d)

*Die Veneris proximo post Crastin' Pur' Anno 21 Caroli primi Regis.*

Attorneys and Sheriffs.

**O**rdinatum est quod omnes Attorn' buj' Cur' non personaliter comparentes hic in Cur' in tres Septiman' Pasche prox' extraponentur e Rotulo quodq; omnes Vic' buj' Regni Angliæ vel eorum Deputat' attendent Cur' hic in Quinden' Pasche prox' Et sic de Die in Diem durante toto Termino Et sic quolibet Termino ad faciend' Responiones suas ad omnia Brevia sive Processus eis respective directi Et a Cur' hic emanant sub Pœna cujuslibet eor' 40 l. (b)

*Die Lune proximo post quinque Septiman' Pasche Anno 23 Caroli primi Regis.*

Easter, 23 Car. I. 1647.

Under-Sheriffs.

**O**rdinatum est quod subvic' cujuslibet Com' Et Civit' attend' Cur' Domini Regis coram ipso Rege secundo Retorn' cujuslibet Termin' sub Pœna 40 l.

**I**t is Ordered that the Under-Sheriffs of every County and City attend the Court of our Lord the King, before the King himself on the second Return of every Term, under the Penalty of 40 l. (c)

*Die Lune proximo post quinden' Sancti Hill. Anno 23 Caroli primi Regis.*

Hil. 23 Car. I. 1647.

Bail.

**O**rdinatum est quod omnes Clerici Philizar' Et Attorn' buj' Cur' qui impon' Speciale Ballium pro Defend' affilabunt omnia talia Special' Ballia sic capi' Et accepti per Attorn' Quer' indilate post Acception' inde aliter præd' Cle-

**I**t is Ordered that all Clerks, Philizars and Attorneys of this Court, who shall put in special Bail for Defendants, shall file all such special Bails (so taken and accepted by the Plaintiffs Attorney) immediately after Acceptance thereof, otherwise the aforesaid Clerks,

*Die Mercurii prox' post Octab' Sancti Hil. Anno Domini 1649.*

Hillary, 1649.

Ejectment.

**I**. **O**rdinatum est quod post ordinat' Regul' buj' Cur' imposterum dat' Defend' ad respond' in aliqua Actione Transgr' Et ejectionis Firmæ Et Defend' non respond' ad Narrationem Judic' dari Et intrari poterit pro Quer' versus Defend' pro Defectu Responi prout in aliis Actionibus absque Speciali Motione in Cur' per Consil' Provisio quod in hoc instanti Termino Sancti Hillar' Quer' dabit Defend' Specialem Notici' bujus general' Regulæ.

**I**t is Ordered that after the ordinary Rule of this Court hereafter given to the Defendant to plead in any Action of Trespass and Ejectment, and the Defendant doth not plead to the Declaration, Judgment may be given and entered for the Plaintiff against the Defendant, for want of a Plea, as in other Actions, without special Motion in Court by Counsel; provided that in this present Term of St. Hillary, the Plaintiff shall give the Defendant special Notice of this general Rule. (e)

*Die Veneris prox' post Octabas Sancti Hil. eodem Anno.*

Hillary, 1649.

Clerk of the Issues.

**II**. **O**rdinatum est quod in quolibet Exitu juncto per Patriam triand' Et Record' de Nisi Prius superinde prosecut' pro Triatione exit' ill' si Clericus buj' Cur' qui Exit' ill' intrare debuit eundem Exit' de Recordo non intrabit ante Initium prox' Termin' post Record' de Nisi Prius ut præfertur prosecut' forisfaciat 20 s. solvend' Pixidi ad usum Pauperum.

**I**t is Ordered that in every Issue joined to be tried by the Country, and a Record of Nisi prius thereon sued out for the Trial of that Issue, if the Clerk of this Court who ought to enter that Issue, shall not enter it of Record before the beginning of the next Term after the Record of Nisi prius sued out as aforesaid, he shall forfeit 20 s. to be paid to the Box for the Use of the Poor. (f)

[c]

Die

(a) Not practised. (b) Note; This is not the Practice at this Time; see the Rules for the Attendance of Attorneys, Trin. 14 Car. II. and of Sheriffs East. 15 Car. II. reg. 2. (c) See East. 15 Car. II. reg. 2. (d) Altered by Hil. 1650. Trin. 13 Car. II. Mich. 16 Car. II. Easter 29 Car. II. (e) But see Trin. 18 Car. II. (f) Easter 1657. reg. 3. Tri. 1 Ja. II. and see Mich. 5 Anne, reg. 1.

*Die Mercurii prox'  
post Octab' Pur'  
Anno 1650.*

Hillary, 1650.

Bail.

III. **O**rdinatum est quod specialia Ballia capta & allocata coram aliquo Justic' huj' Cur' inferrentur in Officio Capitalis Clerici eodem Termino allocata forent affiland' de Termino quo capta fuerunt sub Pen'na quod quilibet Clericus vel Astorn' qui Defaltam fecerit inde solvatis 5 s. solvend' Pixidi Pauperum.

III. **I**t is Ordered, That special Bails taken and allowed before any Justice of this Court, shall be brought into the Office of the Chief Clerk in the same Term in which they were allowed, to be filed of the Term of which they were taken, under the Penalty that every Clerk or Attorney who shall make default therein shall forfeit 5 s. to the Poors Box. (a)

It is Ordered, That due Notice be given to the Defendant upon all Trials at every Assize when any Cause shall be carried to Trial, as was in old Causes as in new Causes; and likewise the Plaintiff in all Causes, to be tried by Proviso, as well in London or Middlesex, as at Assizes.

And it is further Ordered, That from henceforth no Bail be tendred or put in upon any Habeas Corpus, until the Habeas Corpus and Causes for which Bail is to be put in be returned; to the End it may appear what the Causes are for which Defendant is detained, and Bails may be duly taken, and the Habeas Corpora and Bails duly filed. (b)

Easter, 1651.

Monday next after the Morrow of the Ascension of our Lord 1651.

Sheriffs. Jurors.

**I**t is Ordered, That all Sheriffs do upon the Return of every Venire facias, cause sufficient Summons to be given unto all Jurymen that are by them returned upon any Juries, for the Preventing of Tales.

And It is likewise Ordered, That all Attornies do deliver unto the Sheriffs of all Counties of England, within forty Miles of London, all old Distingas's, within eight Days after the End of Hillary and Trinity Term, or else none shall be received; and that all Sheriffs do cause sufficient Summons to be given to all Jurymen, in these old Distingas's, a Week before the Assizes at least.

Mich. 1651.

Monday next after the Morrow of All-Souls 1651.

Notice of Trial.

**F**OR preventing of Inconveniencies which often happen for Want of Notice given upon Trials of old Causes at the Assizes, and for Want of Notice of Trials at Assizes by Proviso, and for putting in of Bails upon Habeas Corpora unduly.

4

(a) See Hil. 23 Car. I. Tri. 12 Car. II. Mi. 16 Car. II. and Easter 29 Car. II.  
(c) Mic. 3 Anne.

(b) See Hil. 10 W. III.

## RULES and ORDERS

OF THE

### Court of Upper Bench,

Made and Published by the Judges of the said Court in the Term of St. Michael in the Year 1654, and first printed Anno Dom. 1655.

#### SECT. I. Concerning Officers and Attornies.

**T**HAT all Officers and Attornies of this Court be admitted of some Inns of Court or Chancery, by the beginning of Hillary Term next, or in the same Term wherein they are admitted Officers or Attornies, and be in Commons one Week in every Term, and take Chambers there; or in case that cannot be conveniently, yet to take Chambers or Dwellings in some convenient Places, and leave Notice with the Butler where their Chamber or Habitations are, under pain of being put out of the Roll of Attornies. (c)

That all Officers and Attornies of this Court appear in Person in this Court, upon, or before the fourteenth Day of Michaelmas Term, and upon or before the seventh Day of every other Term,

Term, upon pain of 10 s. for the first Default; 20 s. for the second Default, and putting out of the Roll upon the third Default. The Appearance to be entred with the Prothonotary: And the Defaulters to be delivered to the Court upon Oath (if required) within three Days after the Time appointed for Appearance. (a)

That every Sheriff have his Deputy in this Court, to return and receive Writs. And that each Deputy Yearly before *Hillary* Term; have his Name and the Place of his Residence in *London* or *Westminster*, set and continued up in Tables, in the Office of the Prothonotary. (b)

That the Clerks of Assize, their Deputies or Assistants, do Personally appear with their *Postes* on the first Day of *Easter* and *Michaelmas* Term; and the Deputy Sheriffs, and all other Officers of the Court do Personally appear by the Effoin Day of every second Return of every Term; and continue there during the residue of the Term, without some just cause to the contrary allowed by the Court.

That for the future, common Solicitors be not admitted to practice in this Court, unless they are admitted Attorneys of either Bench; provided that it extend not to the managing of Evidence at a Trial, nor to private Solicitors, or Servants of Corporations, or other Persons in the Causes of their Masters. (c)

That none be admitted an Attorney of this Court for the Time to come, unless he hath practised as a common Solicitor in this Court by the space of five Years now last past; or hath served, or shall have served by the space of five Years as a Clerk to some Judge, Serjeant at Law, practising Counsel, Attorney, Clerk or Officer of one of the Courts at *Westminster*, unless his Master die or give over his Practice; and be also upon Examination found of good Ability and Honesty for such Employment; and that sufficient proof (to be put into Writing) be made of such service to the Prothonotary upon a desire of Admittance, and then filed without Fee.

That no Person practise in another's Name, nor that any Attorney knowingly permit another to practise in his Name, upon pain of being put out of the Roll. (c)

That Attorneys dismissed by one Court from their Practice for Misdemeanors, be not (after Certificate) admitted to Practise in another Court, it being contrary to the Intent of the Law.

That no Under Sheriff or Bailiff of Sheriffs or Liberties be admitted during such their Employment, to practise as Attorneys, under pain of Expulsion from the Employment of an Attorney and not to be readmitted. (d)

That such Attorneys as have not been attending their Employment in this Court by the space of one Year last past, unless hindered by Sicknefs, be (e) not allowed their Privilege of Attorneys.

That for the Prevention of Maintenance and Brocage, no Attorney be Lessee in an Ejectment, nor Bail for a Defendant in this Court in any Action.

## Sect. II. Concerning Sheriffs and Bailiffs.

THAT for the prevention and remedy of Delays and Abuses in Sheriffs, Under-Sheriffs, Bailiffs of Liberties and their Deputies, and other Bailiffs of Sheriffs, &c. in the execution of Process and Writs; if it shall appear that any such Officer shall wilfully delay the Execution, or (f) Return of any Process or Execution, or shall take or require any undue Fees for the same, or shall give Notice to the Defendant, thereby to frustrate the Execution of any Process, or Writ; or having levied Money, shall detain it in their Hands, after the Times of the Returns of their Writs, besides the ordinary Course of Amerciaments; the Contempt or Misdemeanour appearing, an Attachment, Information, Commitment, or Fine to be, as the Case requireth; and this as well in Case of a late Sheriff, or Person before mentioned, as of them at present in Office.

That to reform the Abuses by Blank Warrants granted by Sheriffs, whereby Persons are arrested and driven to extorted Compositions for their Liberty, without Process of Law, no Warrants be granted out to any Officer to arrest or attach any Person before a Writ first come to the Sheriff.

And whereas Sheriffs have taken immoderate and excessive Fees for Execution of Writs of Possession, and Restitution of Possession contrary to Law; it is declared, That such immoderate Fees ought not to be taken; and in case such shall be taken, this Court to proceed to punish the same according to Law. (g)

## Sect. III. Concerning the Reformation and Punishment of Abuses in general.

Ordered, That a Jury of able and credible Officers, Clerks, and Attorneys, once in three Years be impannelled, and sworn to enquire,

1. Of the Points usually inquirable by Writ, viz. Falsities, Contempts, Misprisions and Offences.

2. Of such who have been admitted Attorneys or Clerks, and are notoriously unfit, their Names to be presented to the Court, and they to be punished or removed, as the Case shall require.

3. Of

(a) Trin. 14 Car. II. (b) Easter, 15 Car. II. reg. 2. (c) Stat. 2 Geo. II. cap. 23. 12 Geo. II. cap. 13.  
(d) Stat. 1 H. 5. c. 4. (e) Lutwiche, 1667. contra. (f) Mich. 6 Geo. II. (g) See Stat. 3 Geo. I. cap. 15 and 16.

3. Of new or exacted Fees, and of those that have taken them under whatsoever pretence, and to prepare and present a Table of the due and just Fees, that the same may be fixed and continue in every Office; and likewise for the *Marshalsea*.

4. And that some Persons be enjoined and sworn to give Evidence, viz. some Clerks of the Court, and some Attorneys in every County, not excluding others.

Sect. IV. *Concerning the better preservation of Order among the Officers and Clerks and observation of breach of Orders and Misdemeanours.*

**T**HAT the Court do once every Year in *Michaelmas* Term nominate Twelve or more able and credible Practisers in the Court to continue for the Year coming, for these Purposes hereafter limited.

That they or any of them examine such Persons as shall desire to be admitted Attorneys, and appoint convenient Times and Places for the same; and in Order thereunto, that such Persons as shall desire to be admitted Attorneys, first attend the Prothonotary with his Proof of Service, then to repair to the Persons appointed to examine Attorneys, and being approved, to be presented to the Court with the Affignation of his Approbation, and then to be sworn in open Court, unless some just exception be against him. (a)

That they give Information to the Court, from Time to Time, of breaches of Orders, and Miscarriages of Officers, Attorneys and Clerks.

That a settled course of Practice, and Proceedings be settled, especially in those Causes where there hath been uncertainty; and that the inconveniencies in Process, Proceedings and Pleadings, may be regulated unto a due course in order whereunto these several things are ordered and directed, according to the Method of Proceedings.

Sect. V. *Concerning Original Suits and Process and where laid.*

**T**HAT Actions upon the Case, Trespas, for Goods, Assault or Imprisonment, arising in any *English* County, be laid in their proper Counties, unless they arise where the Justices of *Nisi Prius* seldom come. And because Trespas and Trover for Goods, Battery, Imprisonment and Slander, must needs be notorious in what County they arise; the Attorney knowingly laying them out of their proper County (unless in the Cases before expressed, or for such other Causes as shall be allowed by the Judges

of the Court, and duly made appear to be true) to be severely punished.

That although the Declaration be delivered seven Days before the last Day of the next precedent Term, or after, yet before Plea upon Oath made, the *Visue* may be changed upon motion, in the said transitory Actions, the next Term after: And the Defendant to plead to the new Action as he should have done in the other, without delay.

That the *Visue* may be changed (upon Oath) as before, though the Defendant come in by *Exigent*.

Sect. VI. *Concerning Process, and serving thereof.*

**T**HAT according to the Provision of the Statute of 31 *Eliz.* (b) all Attorneys that sue out Process of *Exigent*, be careful that Writs of Proclamation be delivered, and the Sheriffs do take care duly to execute the same.

That according to the Statute of the twenty third Year of *Henry* the Sixth, (c) a Prisoner taken upon a *Capias* in Process, be not discharged till he hath given Bond to appear, unless the Plaintiff or his Attorney shall consent to take an Appearance without Bail. And in such Case the Warrant of Attorney to appear, to be subscribed or accepted by the Defendants Attorney, and such Warrant not to be revoked, and an Attachment to be granted against the Bailiff offending herein, or against the Attorney refusing to appear or procure an appearance, having so subscribed or accepted.

Sect. VII. *Concerning Ha' Cor' to Sheriffs and Gaolers.*

**T**HAT a *Habeas Corpus cum Causa ad faciendum & recipiendum*, directed to any Sheriff (other than *London* or *Middlesex*) not to be returnable *immediate*, or in the Vacation Time, but at a Day certain in Court, in the Term, unless it be to deliver over to Prison in discharge of his Bail.

That such *Habeas Corpus* to the Sheriffs of *London* or *Middlesex* may be granted in Term, or Vacation Time returnable *immediate*.

That in case of *Habeas Corpus*, returnable *immediate*, the Sheriff ought to make his Return the same Day that the Writ is delivered, and to bring the Body immediately as is required by the Writ, without permitting him to wander abroad by colour or pretence thereof.

That where a Writ of *Habeas Corpus* is directed to a Sheriff, Warden of the Fleet or Gaoler, the Prisoner is to be brought in Custody according to the Writ at the Day limited, with-

out

out being permitted to wander Abroad in the mean Time, under pretence of such Writ.

That a *Habeas Corpus ad respondendum* may be granted to the Warden of the Fleet, or the Keeper of an inferiour Prison of a Liberty or Franchise, returnable at a Day certain in Court, and to be a good cause of Detainer, as well as where a *Capias ad respondendum* comes to a Sheriff.

That a *Habeas Corpus ad satisfaciendum* may be granted to the Warden of the Fleet, or to such inferiour Gaoler returnable in Court at a Day certain, and the Number Roll of the Judgment to be endorsed upon the Writ by the Attorney who sues it out; and such Writs to be a cause of Detainer.

That if upon a *Habeas Corpus cum Causa*, the Prisoner be returned charged with Process out of the common Bench or Exchequer, though returnable at a Day to come, the Prisoner may be committed with those Causes.

That if upon a *Habeas Corpus*, or *Capi Corpus*, the Party be returned in Custody and Bailable, and special Bail requirable, the Bail not to be taken absolutely without consent of the Plaintiff or his Attorney; and if taken *de bene esse*, the Prisoner not to be discharged till the Bail be assented unto, or the Plaintiff over-ruled in Court to accept the same upon Examination.

#### SECT. VIII. Concerning Habeas Corpus to Inferiour Courts, and Procedendo.

THAT Writs of *Habeas Corpus*, directed to the Inferiour Courts of London, Westminster, Southwark, and other Courts within five Miles of London, may be returnable immediate. And if the Defendant intendeth to be Bailed, then upon, or within four Days after Allowance of the Writ, Notice is to be given in writing of the Names and Addition of the Bail, the Time when, and the Judge before whom the same is intended to be put in, to the Plaintiff or his Attorney, or him that caused the Plaint to be entred; or if none can be found, then Notice of the Premises to be left in writing with the chief Clerk of the inferiour Court, or his Deputy, by the Party that renders the Bail or his Attorney, and Oath made thereof, otherwise the Bail not to be taken. And a *Procedendo* granted, if desired, before Bail accepted.

That if no Bail in such Cases be put in within eight Days after the *Habeas Corpus* allowed in those Courts when it is returnable immediate, a *Procedendo* may be granted by any Judge of the Court, if desired before Bail taken.

And if Bail be taken in the Absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*; and if no Exception be taken within 20 Days after Notice given to the Plaintiff or his Attorney, of the Names of the Bail,

and before whom taken, then upon Oath made of such Notice, the Bail to be delivered out to be filed.

That if Bail upon a *Habeas Corpus* be taken before a Judge at his Chamber, and not excepted against, if not filed within four Days after the twenty Days, a *Procedendo* may be granted upon Certificate that it is not filed.

That in Term Time the Plaintiff in the inferiour Court may speed the Defendant to put in, or to file his Bail by Rules given; and if not filed according to Rules, upon Certificate thereof, a *Procedendo* to be granted.

#### SECT. IX. Concerning special Bail. (a)

THAT in all Causes of removal, be it by *Habeas Corpus*, Privilege, or *Certiorari*, special Bail ought to be given.

That upon a Cause removed, by *Habeas Corpus*, out of the Courts of Canterbury, Southampton, Hull, Litchfield or Pool, which are Counties where the Judges of *Nisi Prius* seldom come, if the Action be transitory, it must be laid in the County of Kent, Southampton, York, Stafford or Dorset, where the Town and County lieth.

That in Covenant because the Damages are uncertain, till Declaration, Bail at discretion.

That in Battery, Conspiracy, false Imprisonment, no special Bail of course, without special Motion and Order.

That in Slander no special Bail, except in Slander of Title, wherein to be left to the discretion of the Judges.

That in Privilege (other then for Fees or disbursements in Court, as an Attorney in this Court) Bail at discretion of the Court, in such Case where in a Suit by a common Person, special Bail is not requisite.

#### SECT. X. Concerning Appearances, and entering thereof.

THAT an Attorney of either Bench accepting a Warrant, or subscribing a Process, Declaration or Warrant to appear, be compelled to cause an Appearance, or liable to an Attachment, or put out of the Roll, as the Case requires; and the Party not to be received to countermand such Appearance after his Retainer.

That no Person without Rule of Court, Order of Judge or Prothonotary, and Notice to the adverse Party or his Attorney, change or shift his Attorney; and such Attorney newly coming in, to take Notice at his peril of the Rules whereunto the former Attorney was liable, had he continued.

That a Retainer of an Attorney of the Common Pleas, by an Attorney of the Upper Bench, &c. *e converso*, be a sufficient excuse to the

[d] At-

(a) Stat. 12 Geo. I. cap. 29.



Attorney so retained, acting according to such retainer; and the Attorney so retaining without Warrant from the Party, to be liable to punishment.

#### SECT. XI. Rules to Declare and Plead.

**I**F the Defendant be committed to the Prison of the *Marshalsea*, by the Process of this Court, the Prisoner giving Rules to declare and Notice thereof to the Plaintiff or his Attorney, and Oath thereof made, the Plaintiff not declaring before the end of the second Term after Commitment inclusively, then the Defendant in reference thereunto, to be discharged of the Imprisonment in the end of the second Term, upon common Bail.

And if any Defendant be committed to any other Prison, upon any Process of this Court, giving Rules and Notice, as before, and Oath thereof made; if the Plaintiff do not (a) remove the Prisoner, and declare before the end of the second Term after the Commitment inclusively, Then the Defendant in reference thereunto likewise to be discharged of the Imprisonment in the end of the second Term, upon common Bail.

#### SECT. XII. Concerning Declarations.

**F**OR avoiding of long and unnecessary Repetitions of the Original Writ in Actions upon the Case, and Personal Actions upon Penal Statutes,

That Declarations in Actions of Trespas upon the Case, or Personal Actions upon any general Statute, namely, *Hue and Cry*, *Monopolies*, or for a Suit in the Admiralty, and such like, other then Debt, repeat not the Original Writ, but only the Nature of the Action, viz. *A. B.* was attached to answer *C. D.* in a Plea of Trespas upon the Case, or in a Plea of Trespas and Contempt against the Form of the Statute.

For the avoiding of the Common Bar, and new Assignment,

The Declaration upon an Original *Quare Clausum fregit*, may mention the Place certainly, and so to prevent the Use and Necessity of the Common Bar and new Assignment.

#### SECT. XIII. That unnecessary Length of Declarations be reformed, and in Order thereunto.

**T**HAT in Actions of Covenant, not to repeat more of the Deed than is necessary for the Assignment of the Breach, and not to repeat the Covenant in the conclusion.

In Actions of Slander long Preambles be forbidden, and no more Inducement than what is necessary for the Maintenance of the Action; but when it requires a special inducement, or colloquium.

That in Actions upon general Statutes, the Declaration not to repeat the Statute, but to conclude against the Form of the Statute, in such case made and provided; as in case of Debt upon the Statute of 2 *Ed.* 6. for Tithes, and 32 *H.* 8. for Maintenance, 21 *Jac.* of Monopolies.

That in Actions of Debt upon a Judgment had in the Courts at *Westminster*, to recite only the Judgment; but if a Judgment had by or against an Executor or Administrator, then the Action of Debt upon that Judgment, to repeat the Declaration and Judgment.

That the Plaintiff may amend his Declaration, paying Costs, or giving an Imparance at the Plaintiff's election, by the Order of Court, or a Judge, after it is entered, if the amendment be but a small Matter, that it doth not deface the Roll.

#### SECT. XIV. Concerning the entering of Rolls, and by whom.

**T**HAT no Rolls be delivered to be entered but to the Prothonotaries Clerks.

That no Rolls be carried into the Country, under pain that the Offender be excluded from entering any more Rolls afterwards as a Clerk.

#### SECT. XV. Concerning Imparances upon Suits by Original.

**F**Orasmuch as some Inconveniences do sometimes happen to the Plaintiffs, by entering their Declaration in special Actions; It is therefore Ordered, That the Plaintiffs in such special Actions, shall have liberty to enter Imparances the Term following, entering the same of the first Term with an *Incipitur*, as it hath been usual; and that all other Imparances be duly entered before any Issues, Demurrers, or Judgments thereupon be entered.

That if a Defendant appear the first Term, and give no Rules to declare, the Defendant's Attorney may the second Term be compelled to accept a Declaration with an Imparance, and the Declaration may be entered as of that Term, with an Imparance over to the next Term, or in the first Term with an *Incipitur*, as before, as the Case shall require.

That if the Plaintiff declare not the second Term, though the Defendant give no Rules, yet a (b) Nonsuit may be entered at the end of the second Term, upon a continuance over by him, by *dies datus*, but not the third Term, or after.

Upcn

(a) Stat. 4 & 5 W. & M. cap. 21.

(b) Stat. 13 Car. II. cap. 2. s. 2.

Upon a meer real Action, an Imparlanee to be of course.

That in Ejectment, or any personal Action, if the Appearance be the first Return of *Hillary* or *Trinity* Term, no Imparlanee without Consent or special Rule.

In Causes other than in *London* or *Middlesex*, if the Appearance be before *Craftinum Martini* or *Mensem Pasche*, no Imparlanee without Consent, or special Rule; but if upon, or after those Returns, an Imparlanee of Course. (a)

In *London* or *Middlesex*, if the Appearance be before *Craftinum Ascensionis*, or before the last Return of any other Term, no Imparlanee without Consent or special Rule; but the Defendant to plead as of that Term, within fourteen Days after the end of the Term, upon Rule given to answer; but if of *Craftinum Ascensionis*, or the last Return, than an Imparlanee of Course.

If a Writ be Returnable *Quinque Pasche*, or the last Return of any Term, the Defendant giving Rules, and calling for a Declaration, if it be not delivered four Days before the Effoin Day of the ensuing Term, or more, a Nonsuit to be entred. (b)

#### Seçt. XVI. Concerning Pleading.

THE Common Bar and new Assignment to be forborn, where the certainty is contained in the Declaration, equivalent to a new Assignment.

That Pleadings be succinct, without unnecessary Repetitions.

That in the pleading of an Outlawry, the mean Procefs be not repeated, but the *Exigent*, and Outlawry joined to the commencing of the Suit.

That in pleading a general Statute, the Statute be not recited: As the Statute of 21 of King *James*, of Limitations.

#### Seçt. XVII. Concerning Demurrers.

THAT according to the Statute of 27 (c) *Eliz.* upon Demurrers, the Causes be specially assigned, and not involved with general unapplied Expressions of double, negative pregnant, uncertain, wanting form, and the like; but to shew specially wherein, that the other Party may (as the Cause shall requite) either join in Demurrer, or Amend, paying Costs, or discontinue his Action.

That it be declared, that matters of Form, as well on the Part of him that Demurs, as of him that joins in all Parts of the Pleading, are discharged, unless such as are specially assigned upon the Demurrer. (d)

#### Seçt. XVIII. Concerning Trials and Notice of Trials and Inquiries.

IF the Plaintiff give Notice of a Trial, and he proceed not, the Plaintiff not to take it down to Trial again, without new Notice to be given, unless by Consent or Rule of Court.

That in case of such Warning, and no proceeding, the Defendant upon Motion, to have his Costs of his former Attendance, to be taxed by the Prothonotary; unless the Plaintiff give the Defendant warning in convenient time that he would not proceed; or shew Cause to be allowed in the Court in excuse of such Costs.

#### Seçt. XIX. Concerning Trials at Bar.

THAT for the Remedy of excessive Charges of Trials at the Bar, especially whilst the Jury lieth out, It is Ordered, that a Jury lying out one Night after a privy Verdict delivered, there be allowed for the whole Dyet of each Juryman that Night no more then 3 s. 4 d. a-piece, and for two Tipstafes and one Orier or Usher, to each of them no more than 2 s. Ordinary, besides the Charges of the Jurors Lodging.

#### Seçt. XX. Concerning special Verdicts at the Bar, and by Nisi Prius.

IN finding of special Verdicts where the Points are single and not complicated, and no special Conclusion, the Council (if required) do subscribe the Points in Question, and agree to amend the Omissions of Mistakes in the mean Conveyance, according to the Truth, to bring the Point in Question to Judgment.

That unnecessary finding of Deeds *in hac verba*, where the Question rests not upon them, but are only derivation of Title, to be spared, and found shortly, according to the substance they bear in reference to the Deed, as Feoffment, Lease, Grant, &c.

#### Seçt. XXI. Concerning new Trials.

THAT where a Verdict finds entire Damages, where Damages are the Principal, and part not Actionable, though Judgment be arrested, yet by Rule of Court a *Venire fac de novo*, may issue as upon an ill Verdict, and upon the new Trial the Party may sever his Damages.

(a) Trin. 5 & 6 Geo. II. Mich. 5 Anne.  
(d) Stat. 4 & 5 Ann. cap. 16.

(b) Stat. 13 Car. II. cap. 2. sect. 2.

Seçt.  
(c) Cap. 5.

## Sect. XXII. Concerning Judgments.

**T**HAT upon a Cause removed by *Habeas Corpus* out of an inferior Court, having Jurisdiction of the Cause, if Judgment be given for the Plaintiff, the Costs below to be considered and cast into the Judgment; if for the Defendant, the Charges of putting in Bail.

That in a Judgment by *non sum Informatus*, or *nihil dicit*, in *Ejectione Firme*, the *Capiasur* be entered upon the first Judgment.

And lastly, It is Declared, That as the Court doth expect, that all the Rules and Orders before mentioned, shall be duly observed; and are resolved severely to punish such as shall break or neglect any of them. So it is further Declared, That all other former Orders and Rules yet in Force not hereby altered, suspended, or annulled, shall be likewise observed and put in Execution according to the true Intent and Meaning of the same.

By the Court.

Henry Rolle,  
Richard Aske,  
Richard Newdigate.

## Easter, 1656.

Wednesday next after five Weeks of Easter,  
1656.

**I**T is Ordered, That upon Notice given to any Clerk or Attorney of this Court to attend the Court upon any Motion to be made, and the said Clerk or Attorney shall neglect to appear in Court, according to Notice given as aforesaid, the said Clerk or Attorney shall pay for every such Offence, 10 s. to the Box. (a)

## Trin. 1656.

Tuesday next after eight Days of the Holy Trinity, 1656.

**I** Whereas the Court is informed, that many Alias and Pluries Capias are often made by Attornies of the Common Pleas, Attornies at large, Solicitors and Under-Clerks of this Court, that are not sworn, when there hath been no Latitat formerly sued forth, or not within the Time

2

limited in former Orders; by Reason whereof the Ministers and Officers of the Court are deceived of their Duties, and the Alias and Pluries Capias so made are never entered upon the Rolls, which are appointed for that Purpose; and the Common Bails are often put in, when the Plaintiff hath Cause to require good Bail, by which Means the Plaintiff loseth the Benefit of the Arrest: For the preventing of which Inconveniencies and Mischief,

It is Ordered, That every Clerk according to ancient Orders, shall upon the signing of every such Writ of Alias and Pluries Capias, and of every Non omittas, subscribe under the Alias, Pluries Capias, and Non omittas, the Term when the Latitat was sued forth, and shew his Titeling Book to him that is appointed to keep the Sign, when the Latitat issued forth; and that no Writ of Alias, Pluries Capias, and Non omittas in Term-Time, be signed before a Note be delivered in, subscribed the Term when the Latitat was sued forth for the Entering of the same; and that in the Vacation Time, the Clerks do enter every such Writ before it be signed. And it is further Ordered, That the Prothonotaries, or one of them, do every Term send for the Under-Sheriffs of every County, City, Town and Village, within this Common-wealth, and cause the said Sheriffs, and every of them, to bring before them all Latitats, Alias, Pluries Capias, and Non omittas, sued forth of this Court, and delivered to them; to the end the same may be perused, viewed and examined by the Prothonotaries, or one of them, whether they be duly sued forth and signed or not.

And it is further Ordered, That all the said Sheriffs do attend the Prothonotaries with their Writs, upon every Summons according to their Summons. And it is also Ordered, That the Keeper of the Seal for the Writs issuing out of the Court of Upper Bench, for the better Prevention of the aforesaid Miscarriages, according to ancient Orders, do not seal any Writ of Latitat, Alias, Pluries Capias, Non omittas, Elegit, Habeas Corpus, Procedendo, Certiorari or Superfedeas issuing out of the said Court, unless the same Writ be first signed with the Sign and Stamp appointed by the Court for that Purpose. (b)

## Trin. 1656.

Wednesday next after fifteen Days of the Holy Trinity, 1656.

Records in the Treasury.

**I**T is Ordered, That Mr. Paget, Clerk of the Treasury, shall appoint one to attend in the Treasury aforesaid, whereby the Clerks

(a) Farther enforced 14 Car. II.

(b) See Easter 15 Car. II. reg. 1.

is of this Court may have Access to search records according to ancient Custom.

the same be filed before the Effoin Day of the Term following. (b)

### Easter, 1657.

Tuesday next after fifteen Days of Easter, 1657.

#### ing Judgments.

It is Ordered, That the Defendants Names in all Judgments that shall be entered in this Court, as of this Term, or hereafter, shall be entered in a Remembrance or Roll Alphabetically, for the better finding out said Judgments. (a)

### Easter, 1657.

Monday next after fifteen Days of Easter, 1657.

#### Bails.

OR the Preventing of many Inconveniences which daily happen to the Plaintiffs Defendants omitting the filing Common according to the ancient Usage and Course of Court.

It is Ordered, That all Clerks of the Office, and Attorneys at large, do within ten days after the end of every Term, deliver to the Secretary, a Note of all such Appearances which have been made unto them the Term before, and to whom they were made; so that he that is appointed to enter the Bails, may see whether they be filed for every such Appearance or not. It is likewise Ordered, That no Clerk, Solicitor, or Attorney, do deliver any Declaration in Court to any Solicitor, or other Person, but to the Clerks, Philizars and Attornies at Law of this Court, upon Pain to forfeit for the first Offence 10 s. and for every other Offence

### Easter, 1657.

Monday in the Morrow of the Ascension of our Lord 1657.

#### Issues.

It is Ordered, That all Issues joined shall be entered upon the Roll before the record of *Nisi prius* be made; and that

### Hillary, 1657.

Tuesday next after fifteen Days of St. Hillary, 1657.

#### Rolls. Paper-Books. Postes.

Imprimis, It is Ordered, That according to the ancient Usage and Custom of the Court, none be permitted to enter any Causes or Judgments upon the Prothonotaries Rolls, but the Prothonotaries or their Clerks to whom the Entering thereof doth of Right belong; and that all the Rolls be entered in a full fair Hand, with a large Margent of an Inch at least, and a convenient Distance at the Top, for the Binding up of the same; and at the Bottom, that the Writing be not rubbed out.

Item, That none be suffered to have Access unto the Rolls or Records, Files of Declarations, Writs or Bails, but Clerks of the Office, or Philizars, who may be answerable for any Misdemeanours which shall be objected against them.

Item, That none do deliver any Copies of special Verdicts or Demurrers to the Justices of this Court, but the Clerks of the Office, who ought to copy and deliver them, and are to examine them, and see they be true, and be answerable for any Mistake in the same.

Item, That no Postes be delivered out of Court to any Person whatsoever, but to the Prothonotaries or their Clerks, or to the Philizars of this Court, who may be answerable for the same, in case any Complaint shall be objected against them.

Item, That if any Clerk of the Office shall permit or suffer any other whatsoever to write or set his Name to any accountable Writ or Writs that are to be signed, or to any other Writ that belongs to the Prothonotaries of this Court, and their Clerks, to make, but such as shall be written by the Hand-writing of the said Clerk, or his Servant; that he or they shall for the first Offence in that Kind forfeit 20 s. and for the second Offence shall be expelled out of the Office.

[c]

Easter,

Easter, 1658.

Monday next after the Morrow of the Ascension of our Lord 1658.

*Entering Causes.*

**I**t is Ordered by the Court, That the ancient Rule of the Court be reviv'd, and henceforth duly observed, that all Causes depending in this Court to hear Counsel, or the Resolutions of the Court remaining undetermin'd in any Term, which ought to be entered into the Court-Book kept by the Clerk of the Papers, be entered into the said Book within seven Days after the End of that Term, to be heard the next Term following, if any of the Parties intend then to proceed, to the End that the Clerk of the Papers, in convenient Time after such Entry, may deliver to every of the Justices of the said Court, a Paper of the said Causes; otherwise the said Causes not to be receiv'd to be enter'd into the said Book, without Motion therefore to be made in Court.

Easter, 1659.

Friday next after a Month of Easter, 1659.

*Sealing Writs.*

**F**orasmuch as the Court is inform'd, That many Writs of Capias ad satisfaciendum, and Testatum Capias ad satisfaciendum, Writs of Fieri facias, and Testatum Fieri facias, and many Times Testatum Capias ad satisfaciendum, and Testatum Fieri facias, without any Capias or Fieri facias first made and returned, are oftentimes unduly made by Attorneys and Under-Clerks and Solicitors that are not sworn; by which Means the Plaintiff is put to unnecessary Charges; and the Defendant being arrested, is discharged upon a Superedeas quia erronee; and afterwards the Defendant absents himself, or elineth his Goods, that Execution cannot be made, whereby the Plaintiff loseth his Debt.

It is therefore Ordered, That no Writ of Capias ad satisfaciendum, or Testatum Capias ad satisfaciendum, or Fieri facias, or Testatum Fieri facias be sealed before the same be signed with the Latitat Sign, upon Pain of 20 s. And it is further Ordered, That the Clerk, that keepeth the Latitat Sign, shall not sign any Writ of Capias ad satisfaciendum, or Testatum Capias ad satisfaciendum, or Fieri facias, or Testatum Fieri facias, unless they be brought to him to be signed by the Clerk of the Office, whose Name is to the same Writ, or

his known Servant; and no Fee is to be taken for the Signing the same.

## RULES and ORDERS OF THE Court of King's Bench.

Die Martis prox'  
post Tres Sept'  
S. Trin. Anno  
13 Car. II. Re-  
gis.

Trin. 13 Car. II.  
1661.

*Filing Bail.*

**O**rdinatum est quod quilibet Attorn' hujus Cur' qui impaverit aliquod Ballium per Recognitionem coram Capital' Justic' seu aliquo al' Justic' Cur' hic & quer' vel ejus Attorn' hujusm' Ballium acceperit quod tunc Attorn' qui impaverit hujusm' ballium id ballium assilari causabit infra viginti dies post talem acceptionem sub pena 40 s. Et quod omnia ballia modo capta de bene esse & que acceper' sunt per Attorn' quer' & nunc remanent cum aliquo Justic' hujus Cur' similiter assilantur infra viginti dias nunc prox' sequen' sub consimili pena 40 s.

**I**t is Ordered, That every Attorney of this Court who shall put in any Bail by Recognizance before the Chief Justice or any of the other Justices of this Court, and the Plaintiff or his Attorney shall accept of such Bail, that then the Attorney who puts in such Bail shall cause that Bail to be filed within twenty Days after such acceptance under the Penalty of 40 s. and that all Bails now taken de bene esse and which are accepted by the Plaintiff's Attorney and now remaining with any Judge of this Court, shall likewise be filed within twenty Days now next following, on the like Penalty of 40 s. (a)

Die Jovis prox'  
p st Mens' Sanc-  
ti Mich' Anno  
13 Car. II. Re-  
gis.

Mich. 13 Car. II.  
1661.

*Seal Office.*

**C**UM ex querel' Clericor' Capital' Cler' hujus Cur' & eorum

**W**hereas at the Complaint of the Clerks of the Chief Clerk of this Court and

(a) See the Rules Mich. 16 Car. II. Easter, 29 Car. II. — 5 W. & M. 1692, & Mich. 8 Ann.

rum Clericor' Cur' hic datur intelligi & informari 2<sup>a</sup> cum secund' usum & consuetudinem Cur' hic de antiquo usat' Custodes figilli Dom' Regis pro Cur' hic allocaverunt & allocari consueverunt & debuerunt cuilibet Clerico Capital' Cleric' hujusm' Cur' & cuilibet Clerico hujusm' Cleric' ad finem cuilibet Termini figillation' unius brevis gratis sine aliquo inde solvend' nomine Je vous prie, quodque hujusm' allocatio per hujusm' Custodes figilli præd' nuper negat' & detent' fuit.

Ordinat' est quod Allocatio præd' Clericis præd' secund' antiquum usum Cur' hic de futuro allocetur per Custodes figilli Dom' Regis pro Cur' hic nisi Custodes figilli præd' ostenderent causam in contrari' die Lune prox' post Crastin' Animar'.

and their Clerks, this Court is given to Understand and informed, that whereas according to the Use and Custom of this Court antiently used, the Keepers of the Seal of our Lord the King for this Court have allowed, and used and ought to allow to every Clerk of the chief Clerk of this Court, and every Clerk of such Clerk at the End of every Term, the Sealing of one Writ gratis without any thing to be paid for the same, by the Name of Je vous prie, and that such Allowance by such Keepers of the Seal aforesaid hath been lately denied and detained;

It is Ordered, That the Allowance aforesaid to the said Clerks according to the ancient Use of the Court here for the future be allowed by the keepers of the Seal of our Lord the King for this Court, unless the said Keepers of the Seal shall (a) shew Cause to the contrary on Monday next after the Morrow of All-Souls.

Die Lune prox'  
post Mens' Pasch.  
Anno 14 Car. II.  
Regis.

Easter, 14 Car. II.  
1662.

#### Motions in Court.

Ordinatum est per Cur' quod quilibet Clericus & Attorn' hujus Cur' super noticiis dat' ad attend' aliquam motionem in Cur' attend' hujusm' motionem in Cur' secund' notici' sub pena forisfaciend' decem solid' solvend' per hujusm' Cleric' & Attorn'.

It is Ordered by the Court that every Clerk and Attorney of this Court upon Notice to them given to attend any Motion in Court, shall attend such Motion in Court according to Notice, under the Penalty of forfeiting 10 s. to be paid by such Clerk and Attorney. (b)

Die Martis prox'  
post Octab. Sancte Trin. Anno  
14 Car. II. Regis.

Trin. 14 Car. II.  
1662.

#### Ejectment.

Ordinatum est per Cur' quod in qualibet Actione de placito transgr' & ejection' firma fore prolat' si terra jacent in Comit' Midd' tunc billa de Midd' prosecut' fuerit & si terra jacent extra Midd' tunc bre' de Lat' prosecut' fuerit versus casual' Ejector' in qualib' tali ejectione defend' nominat' Ac etiam quod commune ballium pro tali defend' affiletur antequam aliqua declaratio per billam in hujusm' Actione deliberat' fuerit alicui tenenti in possession' tenementor' in hujusm' Narr' specificat'. Et quod si Attorn' hujus Cur' pro quer' defecerit in performance inde, tunc nullum judicium intretur pro quer' versus casual' Ejectorem nec tenens in possession' cogn' dimission' intration' & ejection' tenementorum in tali Narr' mentionat', ad triand' Exit' inter partes prædict'.

It is Ordered by the Court that in every Action of a Plea of Trespass and Ejectment to be brought, if the Lands lie in the County of Middlesex, then a Bill of Middlesex shall be sued out, and if the Lands lie out of Middlesex, then a Writ of Latitat shall be sued out against the casual Ejector in every such Ejectment named Defendant. And also that common Bail shall be filed for such Defendant before that any Declaration by Bill in such Action shall be delivered to any Tenant in Possession of the Tenements in such Declaration specified. (c) And that if an Attorney of this Court for the Plaintiff shall make Default in the Performance thereof then no Judgment shall be entered for the Plaintiff against the casual Ejector, nor shall the Tenant in Possession Confess Lease, Entry and Ouster of the Tenements in such Declaration mentioned to try the Issue between the Parties aforesaid. (d)

Die Mercurii prox'  
post Tres Sept'  
Sancte Trin' Anno 14 Car. II.  
Regis.

Trin. 14 Car. II.  
1662.

#### Attorneys.

Ordinatum est per Cur' quod omnes Attorn' hujus Cur' comparebunt in Cur' in eorum propr' personis super vel ante decimum quartum diem Termini Sancti Michaelis & super

It is Ordered by the Court that all Attorneys of this Court shall appear in Court in their proper Persons upon or before the 14th Day of the Term of Saint Michael, and upon or before

(a) Note; It does not appear that any Cause was shewn.

(b) Easter, 1656.

(c) Mich. 33 Car. II. Trin.

4 W. & M. (d) Note; It has been lately held that there is no Necessity for a Bill of Middlesex or a Latitat, where the casual Ejector files common Bail, for his being admitted out to Bail implies he was once a Prisoner, and whether he came into Court regularly by Latitat or not, yet the Judgment is not coram non Judice. See the Stat. 4 & 5 Ann.

*per vel ante septimum diem cujuslibet al' Termini sub pœna forisfaciend' pro primo defalt' 10 s. Et pro Et secundo defalt' 20 s. Et quod quilibet Attorn' intrat' fuerit in Officio bujus Cur' omnia placita Et Morationes in Lege infra tres Dies post finem cujuslibet Termini. Et quod nulla Regula facta fuerint per aliquem Justic' Cur' Domini Regis coram ipso Rege in aliqua Actione in dicta Cur' penden' post tertium diem prox' post finem alicujus Termini. Et quod null' Attorn' dict' Cur' attend' aliquem Justic' præd' ad faciend' aliquas Regulas post tertium diem prox' post finem alicujus Termini. Et quod null' Regule facta fuerint peremptorie Attorn' post tertium diem post finem alicujus Termini. Et quod omnes Regule facta post tertium diem post finem alicujus Termini vacue forent.*

fore the 7th. Day of every other Term, under the Penalty of forfeiting for the first Default 10 s. and for the second 20 s. And that every Attorney shall enter in the Office of this Court all Pleas and Demurrers in Law within three Days after the end of every Term, and that no Rule shall be made by any Justice of the Court of the Lord the King before the King himself in any Action in the said Court pending, after the third Day next after the end of any Term. And that no Attorney of the said Court shall attend any of the said Justices to make any Rules after the third Day next after the end of any Term, and that no Rules shall be made peremptorily to attend after the third Day after the end of any Term and that all Rules made after the third Day after the end of any Term shall be void.

*Die Martis in Crastino Purificationis beate Mariæ Anno 15 Car. II. Regis.*

Hil. 15 Car. II. 1662.

Attorneys.

*I. Ordinatum est quod quilibet Attornat' buj' Curie personaliter attend' Magistrum Jebyll ad tempora per ipsum præfixenda super Notic' inde eis dat' ad examinand' Causas coram ipso in Referenc' existent'. Et quod quilibet Attorn' qui defalt' inde fecerit pro qualibet defalt' forisfaciet decem solid'.*

*I. It is Ordered that every Attorney of this Court personally attend Master Jebyll at Times by him to be prefixed upon Notice thereof to them given, to examine Causes that shall be in Reference before him; And that every Attorney who shall make default therein for such Default shall forfeit 10 s.*

*Die Jovis prox' post Octab' Pur' beate Mariæ Anno 15 Car. II. Regis.*

Hil. 15 Car. II. 1662.

*II. Ordinatum est per Cur' quod nullum bre' de alias vel plur' Distring' Jur' cum Tales pro triatione Exit' ad Barr' emanat' fuerit priusquam præcedens breve de Distring' Jur' cum pannello de nominibus Jur' adinde annex' deliberetur Secundario bujus Cur' ad intentionem quod Exitus forisfacti per Jur' pro eorum non comparentia super dicto præceden' brevi debito modo extrahantur.*

*II. It is Ordered by the Court, that no Writ of Alias or Pluries Distringas Juratores with a Tales for a Trial of an Issue at Bar, shall issue before the Precedent Writ of Distringas Jur' with a pannel of the Names of the Jurors annexed thereto, be delivered to the Secondary of this Court, to the Intent that the Issues forfeited by the Jurors for their Non-appearance upon the aforesaid foregoing Writ may be duly E- straited.*

Easter, 15 Car. II. 1663.

*Die Mercurii prox' post Tres Sept' Pasc' Anno 15 Caroli II. Regis.*

Sealing Writs.

*I. It is Ordered by the Court, That the Keepers or Deputy-Keepers of the Seal, appointed for Sealing of Writs issuing out of this Court of King's Bench, or any of them, shall not seal, nor suffer to be sealed, any Writ or Writs of Latitat, Habeas Corpus, Subpœna, Scire facias, or other signable Writs issuing out of the said Court, unless the same Writs respectively be first signed with the Sign of the said Court, kept by the Clerk appointed for that Purpose.(a)*

Easter, 15 Car. II.

*Die Veneris in Cro' Ascen' Domini Anno 15 Car. II. Regis.*

Prisoners.

*II. It is Ordered by the Court, That no Bailiff nor Sheriff's Officer shall presume to exact or take from any Person, being in his Custody by Arrest, any Warrant to ac- know-*

\* *Quare Attend'.*

(a) Hil. 1656.

knowledge a Judgment, but in the Presence of an Attorney for the Defendant, which Attorney shall then subscribe his Name thereunto; which said Warrant shall be produced when the said Judgment shall be acknowledged. And if any Bailiff or Sheriff's Officer shall hereafter offend, or do contrarywise, he shall be severely punished for so doing. And it is further Ordered, That no Attorney shall from henceforth acknowledge or enter, or cause to be acknowledged or entered, any Judgment; by Colour of any Warrant gotten from any Defendant being under Arrest, otherwise than as is aforesaid.

*Die Lunæ prox' post Crastin' Ascen' Dom'  
Anno 15 Caroli II. Regis.*

III. **I**t is Ordered, That if any Clerk of the Office do not make his Account with the Secondary within ten Days after the End of *Hillary* Term, within six Days after the End of *Easter* Term, within ten Days after the End of *Trinity* Term, and within eight Days after the End of *Michaelmas* Term, according to the ancient Custom; every Clerk so offending shall for the first Offence be suspended from his Privilege of Practice as a Clerk of the Office, until he hath made his Account, and paid the Money due thereupon: And for the second Offence, at the Discretion of the Chief Clerk or Secondary, to suffer Expulsion. (a)

Easter, 15 Car. II.

*Sheriff's Deputies.*

IV. **I**t is Ordered, That every Sheriff shall make, and cause to be entered on Record, a sufficient Deputy to receive all manner of Writs and Process, under the Pains and Penalties mentioned in the Statute in that Behalf, made in the 23d Year of the Reign of the late King *Henry* the Sixth (b); which Law shall from henceforth be duly put in Execution.

And it is further Ordered, That the said Sheriffs, or their sufficient Deputies, shall give their personal (c) Attendance in *Westminster Hall* daily in the Term-Time, that so they may with the more Convenience dispatch those Services which appertain to their Offices respectively. And that no Sheriff nor Sheriff's Deputy, shall deliver or make, nor cause or suffer to be deliver-

ed or made, (d) any Warrant or Warrants before the Writ or Writs be duly sued forth and delivered to the said Sheriffs or their Deputies respectively. Neither shall the said Sheriffs or their Deputies deliver, nor cause or suffer to be delivered, any Blank Warrants; nor shall any Clerk or Attorney of this Court receive, or procure to be made, any such Blank Warrants, upon Pain of severe Punishment, and Fine, to be imposed upon the said Sheriffs and their Deputies, and utter Expulsion of the said Clerks or Attornies respectively offending in the Premises.

*Die Mercurii prox'  
post Tres Septi-  
manas Sanctæ  
Trin. Anno 15  
Caroli II. Regis.*

Trin. 15 Car. II.  
1663.

I. **O**rdinatum est per Cur' quod in qualibet actione Transgr' & Ejectione firmæ ubi per Regulam Cur' l'endens cogn' Dimissionem Intriati- nem & Ejectionem pro- tant' præmissor' in nar- ratione mentionat' quænt' sunt in possessione dicti Defenden' aut Sub- tenentium suor', Attorn' ejusdem Defenden' pro- tinus deliberabit At- torn' Queren' certam notam in scriptis de Te- nementis sic in possessione dicti Defend' aut Sub- tenentium suor' existen'.

*Ejection.*  
I. **I**t is Ordered by the Court that in every Ac- tion of Trespass and Eject- ment where the Defendant by the Rule of Court, shall confess Lease, Entry and Ouster, for so much of the Premises in the Declaration mentioned as are in the Pos- session of the said Defendant or his Under-tenants, the Attorney of such Defendant shall immediately deliver to the Plaintiff's Attorney a certain Note in Writing of the Tenements so being in the Possession of the said Defendant or his Under-tenants.

*Eodem Die.* The same Term,  
1663.

II. **O**rdinatum est per Cur' quod nullam Recordum de Nisi prius pro Triati- one Exiit' ad Affisas sigille- tur post finem unius men- sis prox' sequen' Clausum Termini.

*Records of Nisi Prius.*  
II. **I**t is Ordered by the Court that no Record of *Nisi prius* for the Trial of an Issue at the Affises be sealed after the end of one Month next after the end of the Term. (e)

[f] *Die*

(a) Note; All Rules for accounting with the Secondary are now of no Use, because the Clerks of the Office pay for their Entries upon Signing their Judgments, or Sealing their Records. See Trin. 20 Car. II. (b) Cap. 10. (c) Hil. 21 & Ea. 23 Car. I. (d) Stat. 6 Geo. I. c. 21. (e) Trin. 31 Car. II. East. 7 Geo. I.



*Die Martis in  
Crast' Animar'  
Anno 15 Car. II.  
Regis.*

Mich. 15 Car. II.  
1663.

Affidavits.

I. *O* *R*dinatum est  
quod verus locus  
habitationis & vera  
additio cujuscunque per-  
sonae quae praestiterit Sa-  
cramentum suum in Cur'  
hic inferantur in bu-  
jusmodi Sacramento.

I. *I*t is Ordered, that the  
true Place of Abode  
and the true Addition of e-  
very Person who shall make  
Affidavit in Court here shall  
be inserted in such Affida-  
vits.

*Die Mercurii in  
Festo Sancti  
Martini Anno  
15 Caroli II. Re-  
gis.*

Mich. 15 Car. II.  
1663.

Acetiam. Arrests.

II. *O* *R*dinatum est  
per Cur' pro  
evitatione oppressionis  
coloris process. e Cur'  
hic emanant qd' nullas  
Attorn' presumat ad  
periculum suum facere  
vel fieri causare aliquod  
preceptum seu breve  
cum Clausula Aceti-  
am, &c. versus ali-  
quem heret' Executo-  
rem seu Administratorem  
nec in aliquo casu ubi  
per consuetudinem Cur' spe-  
ciale Bail peti non de-  
bet: Quodque si Defend'  
legitime deliberetur ab  
Arresto super aliquo pro-  
cess. idem Defend' non ite-  
rum arrestabitur eodem  
tempore virtute alius  
processus ad seclatamejus-  
dem querentis. Et si ali-  
quis Attorn' aut Quer'  
offenderit in praemissis  
nomen cujuscunque Attorn'  
sic offenderis expungetur e  
Rotulo Attorn' & praeterea  
tam idem Attorn'  
quam Quer' in dicto  
process. nominat' re-  
spectivus punientur prout  
Cur' justum videbitur.)

II. *I*t is Ordered by the  
Court for the avoiding  
of Oppression by colour of  
Process issuing out of this  
Court, that no Attorney  
presume at his Peril to make  
or cause to be made any pre-  
cept or Writ, with a Clause  
of *Ac etiam*, &c. against  
any Heir, Executor or Ad-  
ministratorem, nor in any Case,  
where by the course of the  
Court special Bail is not re-  
quired. (a) And that if a De-  
fendant shall be lawfully de-  
livered from an Arrest upon  
any Process, the same Defen-  
dant shall not be again Ar-  
rested at the same time by  
Virtue of any Process, at the  
Suit of the same Plaintiff,  
and if any Attorney or Plain-  
tiff shall offend in the Pre-  
misses, the Name of such  
Attorney so offending shall  
be struck out of the Roll  
of Attorneys, and further,  
as well the said Attorney as  
the Plaintiff in the said Pro-  
cess named, shall be respec-  
tively punished as to the  
Court shall seem just.

1

*Die Sabbati prox'  
post Octab' Sanc-  
ti Martini An-  
no 15 Car. II.  
Regis.*

Mich. 15 Car. II.  
1663.

Fees to the Clerk of the Declarations.

III. *O* *R*dinatum est  
per Cur' qd'  
quilibet Clericus hujus  
Cur' quolibet Termine  
tempore redditionis com-  
puti sui solvat Officiario  
hujus Cur' qui recipit  
billas hic in Cur' de  
Recordo affiland' anti-  
quum feod' duorum soli-  
dorum pro quolibet At-  
torn' & Philizar' hu-  
jus Cur' qui retinet dic-  
tum Clericum ad agend'  
& intrand' scilicet &  
negotia in eadem Cur'  
hic pendet.

III. *I*t is Ordered, by  
the Court that every  
Clerk of this Court in every  
Term at the Time of ren-  
dering his Account, shall  
pay to the Officer of this  
Court who receives Bills  
here in Court to be affiled  
of Record the ancient Fee  
of 2 s. for every Attorney  
and Philazer of this Court  
who retains such Clerk to  
act and enter Suits and  
Business in the said Court  
here depending. (b)

*Die Sabbati prox'  
post Quinden'  
Sancti Martini  
Anno 15 Car. II.  
Regis.*

Mich. 15 Car. II.  
1663.

Additions.

IV. *O* *R*dinatum est  
per Cur' qd'  
in omnibus actionibus  
transgress. & aliis ac-  
tionibus ubi causa Ac-  
tionis allegat' fieri Vi  
& Armis seu contra pa-  
cem Domini Regis pro-  
sequend' in Cur' hic,  
vera additio Gradus  
qualitatis seu mysterii,  
acetiam verus locus ha-  
bitationis cujuscunque de-  
fend' inferantur in qua-  
libet hujusmodi actione  
ad periculum Attorn'  
quer.

IV. *I*t is Ordered by  
the Court, that in all  
Actions of Trespas and other  
Actions (c) where the cause  
of Action is alleged to be  
done by Force and Arms or  
against the Peace of the  
Lord the King, to be prose-  
cuted in this Court, the  
true Addition, Degree, Qua-  
lity or Mystery, and also the  
true Place of Abode of e-  
very Defendant, shall be  
inserted in every such Ac-  
tion at the peril of the Plain-  
tiff's Attorney.

Hil. 15 & 16 Car. II. 1663.

*Die Veneris prox' post Octab' Pur' beatae Ma-  
rie Anno 15 & 16 Car. II. Regis.*

I. *O* *R*dinatum est per Cur' qd' quilibet Clericus hujus  
Cur' reddat Comp'm suum Secundario ejusdem Cur'  
infra sex dies prox' post finem cujuscunque Terminis Pasche &  
infra

(a) Stat. 13 Car. II. cap. 2. (b) Further enforced by the Rule, Easter, 19 Car. II. (c) By Original. Lilly's Reg. 35.

*Infra octo dies prox' post finem cujuslibet Termin' Sancti Michaelis, & infra decem dies prox' post finem cujuslibet Termin' Sancte Trinitatis & St. Hillarii secund' antiquam consuetud' & separales priores Regulas hujus Cur'. Et qd' quilibet Clericus imposterum offendens in præmissis pro prima offensi. suspendatur a privilegio practicationis suæ quodq; nulla brevia nomine suo signentur nec Rotuli de intrationibus suis in officium recipiantur quousq; Comp'm suum reddidit & denar' superinde debet' solverit. Et qd' pro secunda offensi' in præmissis expungatur e Rotulo Clericorum hujus Cur' ad discretionem Capitalis Clerici vel Secundar' hujus Cur'. (a)*

Hil. 15 & 16 Car. II. 1663.

**Trials.**

**O**rdinatum est per Cur' qd' Ex-itus juncti de aliquo præcedente termino trias fuerint infra primam Septimanam cujuslibet Termin' : Et qd' Custos Brevium hujus Cur' non sigillabit aliquod Recordum de Nisi prius talem Exit' post Septimanam cujuslibet Termin' absque special' licenc' Capitalis Justiciarii hujus Curie : Et ulterius Ordinatur qd' Nisi Cause triand' apud London & Midd' intrat' fuer' cum Capital' Justic' hujus Cur' per spatium duorum dierum ante Sessionem super qua tal' Cause triand' sunt, Marshallus possit intrare No recipiatur ad instantiam defendentis si-ve ejus Attorn'.

**I**t is Ordered by the Court, that Issues joined of any preceding Term shall be tried within the first Week of every Term, and that the Custos Brevium of this Court shall not seal any Record of Nisi prius of such Issues after one Week of every Term, without the special Licence of the Chief Justice of this Court. (b)

And it is further Ordered that unless the Causes to be tried at (c) London and Middlesex be entered with the Chief Justice of this Court by the space of two Days before the sittings upon which such Causes are to be tried, the Marshal may enter a Ne Recipiatur at the Request of the Defendant or his Attorney.

*Die Lune prox' post Crastin' Ascens' Domini Anno 16 Caroli II. Regis.*

Easter, 16 Car. II. 1664.

**Prisoners.**

**O**rdinatum est per Cur' qd' quilibet Attorn' hujus Cur' qui exonerabit aliquem Prisonar' onerat' cum aliqua Actione hic in

**I**t is Ordered by the Court that every Attorney of this Court, who shall discharge any Prisoner, charged with any Action

*Cur' penden' extra prisonam pro defectu prof. infra tres terminos dabit notitiam Quer' in eadem Actione vel ejus Attorn' ad comparand' coram aliquo Justic' hujus Cur' ad ostend' causam quare hujusmodi Prisonar' exonerari non debet pro defectu prosecutionis priusquam procurabit aliquod warrantum sub manu aliquus Justic' hujus Cur' pro exoneratione hujusmodi prisonar' extra prisonam. Et si Quer' in eadem Actione vel ejus Attorn' super hujusmodi notitiam eis vel eorum alteri inde dat' non comparebit ad ostend' causam in contrarium tunc super Sacramentum præstand' hujusmodi notitiæ, hujusmodi prisonar' versus quem nulla prosecutio fuit infra tres terminos tunc prox' præceden' exoneretur extra Prisonam ad periculum Attorn' qui procurabit hujusmodi prisonar' in forma præd' exonerari.*

here in Court pending, out of Prison for want of Prosecution within three Terms, shall give Notice to the Plaintiff in such Action or his Attorney, to appear before some Justice of this Court, to shew Cause why such Prisoner ought not to be discharged for want of Prosecution before he shall procure any Warrant under the Hand of any Justice of this Court for the discharge of such Prisoner out of Prison. And if the Plaintiff in the same Action or his Attorney, upon such Notice to them or either of them thereof given, shall not appear to shew Cause to the contrary, then upon Oath made of such Notice, such Prisoner, against whom no Prosecution hath been within three Terms then next preceding, shall be discharged out of Prison, at the Peril of the Attorney who shall procure such Prisoner to be discharged in form aforesaid. (d)

Eodem Die. The same Day 1664.

**Error.**

**O**rdinatum est per Cur' qd' quilibet Attorn' hujus Cur' qui prosecut' fuit aliquod breve de Errore super aliquo Judicio in Cur' Domini Regis coram ipso Rege obtento retornabit in Cur' Camera Scaccarii allocabit hujusmodi breve de Errore cum Clerico Errorum hujus Cur' infra quatuor dies prox' post notitiam dat' Attorn' Quer' hujusmodi brevis de Error' sic per ipsum prosecut' uctum Recogn' super hujusmodi breve de Errore cognitionem

**I**t is Ordered by the Court, that every Attorney of this Court who shall prosecute any Writ of Error upon any Judgment obtained in the Court of our Lord the King, before the King himself, returnable in the Court of Exchequer Chamber, shall allow such Writ of Error with the Clerk of the Errors of this Court within four Days next after Notice given to the Plaintiff's Attorney of such Writ of Error so by him sued out, and also shall put in Bail upon such Writ of Error

(a) The Practice in this Case is altered, as is mentioned before, East. 15 Car. II. reg. 1. (b) See the Rule Hil. 20 & 21 Car. II. (c) Within the Term. See Mich. 4 Ann. (d) Easter, 5 W. & M. Trin. 9 W. & M. See Trin. 2 Geo. I.

tionem infra quatuor dies prox' post allocationem hujusmodi brevis de Errore (si Recogn' inde cognosci debet) vel in defectu inde executio fiat super hujusmodi Judicio, brevi de Errore in forma præd' prosecut' non obstan'.

Error within four Days next after the Allowance of such Writ of Error (if Bail thereon ought to be acknowledged) or in Default thereof Execution may be taken out upon such Judgment notwithstanding the Writ of Error sued out in form aforesaid. (a)

qd' talis Assens' vel Clericus expellatur e Cur' hic secund' priorem Regulam peremptor' & general' fact' in consimili casu per Cur' in plena Cur' Die Mercur' prox' post tres Septiman' Stæ Trin' Anno Regni Domini Jacobi nuper Regis Angliæ, &c. Secundo, &c.

Court here according to the Rule in that behalf made Trin. 2 Jac. I. (b)

Die Mercur' prox' post Tres Sept' Stæ Trin. Anno 16 Car. II. Regis.

Trin. 16 Car. II. 1664.

Special Pleas.

**O**rdinatum est per Cur' in plena Cur' qd' nullus Attorn' sive Clericus attenden' hic in Cur' præsumat deliberare alicui al' Attorn' vel Cleric' attenden' hic in Cur' vel alicui al' person' vel accipere ab aliquo al' Attorn' vel Clerico attend' in Cur' hic vel aliqua al' person' aliquod placitum imponend' in Officium Cleric' Papir' vel copiam hujusmodi placiti priusquam hujusmodi placitum imposui fuerit in eodem Officio Cleric' papir'. Et quod talis Copia postquam hujusmodi placitum imponetur fact' fu'it per Clericum in prædict' Officio Cleric' papir' attenden' & signat' sub manu unius Clericorum ibidem attenden' sub pœna qd' quilibet Attorn' sive Clericus in Cur' hic attend' forisfaciet pro prima offens. sua sic commissa decem solid' solvend' Pixidi ad usum Pauperum: Et pro secunda offens. sua sic commiss. viginti solid' solvend' similiter Pixidi ad usum Pauperum: Et pro tertia offens. sua sic commiss.

**I**t is Ordered by the Court in full Court, that no Attorney or Clerk attending here in Court, presume to deliver to any other Attorney or Clerk attending here in Court, or to any other Person, or to accept from any other Attorney or Clerk attending here in Court, or from any other Person, any Plea that ought to be left in the Office of the Clerk of the Papers, or a Copy of such Plea, before such Plea be left in the same Office of the Clerk of the Papers, and that such Copy after such Plea is left shall be made by the Clerk attending in the aforesaid Office of the Clerk of the Papers and signed under the Hand of one of the Clerks attending there, under the Penalty that every Attorney or Clerk attending here in Court for the first Offence so committed shall forfeit 10s. to be paid to the Box to the use of the Poor, and for the second Offence committed 20s. in like Manner to be paid to the Box for the use of the Poor; and for his third Offence such Attorney or Clerk shall be expelled from the

De Termino Sti. Michaelis Anno 16 Car. II. Regis.

Mich. 16 Car. II. 1664.

**O**rdinatum est per Cur' qd' quilibet Attorn' hujus Cur' qui comparebit pro aliquo Defend' in aliqua Actione in qua speciale Ballium non requiritur affilabit commun' Ballium pro hujusmodi Defend' infra sex dies prox' post finem ejusdem Termin' de quo comperuit: Et qd' quilibet Attorn' hujus Cur' qui imponeret aliquod speciale Ballium coram aliquo Justic' hujus Cur' de bene esse super Cepi Corpus dabit notitiam inde indilate Quer' vel ejus Attorn'. Et si quer' non calumpniabit Ballium illud pro insufficiente inde infra viginti dies prox' post notitiam ei vel ejus Attorn' inde datam, tunc super Sacramentum præstii' in scriptis hujusmodi notitiæ in dorso ejusdem Ballii (pro quo Sacramento nullum feodum cap' fuerit) Ballium illud affilabitur per Attorn' Defend' infra quatuor dies prox' post finem præd' viginti dierum. Et quod quilibet Attorn' hujus Cur' qui imponeret aliquod speciale Ballium coram aliquo Justic' hujus Cur' de bene esse super brevi

**I**t is Ordered by the Court that every Attorney of this Court, who shall appear for any Defendant in any Action in which special Bail is not required, shall file common Bail for such Defendant within (a) six Days next after the end of the same Term of which he appeared.

And that every Attorney of this Court who shall put in any special Bail before any Justice of this Court de bene esse upon a Cepi Corpus shall give Notice thereof without delay to the Plaintiff or his Attorney, and if the Plaintiff shall not (c) except to that Bail for Insufficiency thereof, within 20 Days next after Notice thereof given to him or his Attorney, then upon Affidavit in writing of such Notice on the Back of the said Bail-piece (for which Affidavit no Fee shall be taken) that Bail shall be filed by the Defendants Attorney within four Days next after the end of the aforesaid twenty Days.

And that every Attorney of this Court, who shall put in any special Bail before any Justice of this Court de bene esse upon a Writ of Habeas

(a) See Easter, 36 Car. II. Mich. 5 W. & M. there.

(c) See Trin. 4 W. & M. reg. 2. is to file common Bail in eight Days after the return, or the Plaintiff may file it for him, Stat. 5 Geo. II. cap. 27. 12 Geo. I. cap. 29. Mich. 10 Geo. II. reg. 2.

(b) Further enforced, Mich. 2 W. & M. and see the Note there.

(d) Where the Defendant is served with a Copy of the Process he is to file common Bail in eight Days after the return, or the Plaintiff may file it for him, Stat. 5 Geo. II. cap. 27. 12 Geo. I. cap. 29. Mich. 10 Geo. II. reg. 2. (e) Mich. 8 Ann. reg. 2. Easter, 5 Geo. II.

*breui de Ha' Cor' si quer' non calumpniabit Ballium illud pro insufficienc' inde infra viginti & octo dies post impositionem inde tunc Ballium illud affilabitur per Attorn' Defend' infra quatuor dies prox' post finem viginti & octo dierum sub pœna qd' quilibet Attorn' defali' facien' vel in non dando notitiam ut prædictum est vel in non affilatione separat' Ball' præd' vel eorum alicujus in forma præd' forisfaciet & solvet pixidi bujus Cur' pro primo delicto suo Summ' quinq; solidorum, & pro secundo delicto suo expungetur e Rotulo Attorn' bujus Cur'.*

*Et ulterius ordinat' est ea intentione qd' Ballia præd' debis' affilentur qd' Clerici Justic' bujus Cur' in quorum manibus Ballia sic capt' de bene esse remanebunt infra sex dies prox' post finem cujuslibet Termin' dabunt notam in scriptis Secundario bujus Cur' omnium Ball' de Termino præceden' sic impositi & in eorum manibus tunc remanen' una cum nominibus Attorn' qui Ballia illa imposuerunt & die impositionis eorundem.*

*beas Corpus*, if the Plaintiff shall not (a) except to that Bail for Insufficiency thereof within 28 Days after the putting in thereof, then that Bail shall be filed by the Defendant's Attorney within four Days next after the end of the 28 Days, under the Penalty that every Attorney making Default either in not giving Notice as is aforesaid, or in not filing the several Bails as is aforesaid, or either of them in Form aforesaid, shall forfeit and pay to the Box of this Court for his first Default 5 s. and for his second Default shall be struck out of the Roll of the Attorneys of this Court. (b)

And it is further Ordered, to the Intent that the Bails aforesaid may be duly filed, that the Clerks of the Justices of this Court, in whole Hands the Bails so taken *de bene esse* shall remain, shall within six Days after the end of every Term give a Note in writing to the Secondary of this Court of all Bails of the foregoing Term so put in and then remaining in their Hands, together with the Names of the Attorneys who put in those Bails, and the Day of putting them in.

*liqua causa hic in Cur' jam penden' vel postea prosequend' recept' fuerint per Clericos Papir' bujus Cur' antequam bujusmodi placita vel morationes in lege signat' fuerint manu propr' alicujus Conciliar' in ea parte retent' ;*

*Et ulterius ordinat' est qd' Clerici Papir' bujus Cur' in omnibus Copiis placitorum & Libris papir' per ipsos faciend' subscribant bujusmodi Copiis placitorum & libris papir' nomina Concil' qui signaverint bujusmodi placita tam ex parte quer' quam ex parte Defend', Et qd' omnibus libris deliberand' Justic' bujus Cur' nomina Concil' qui signabunt placita illa tam ex parte Quer' quam ex parte Defend' subscript' forent bujusmodi libris per Clericos vel Attorn' qui libros illos deliberarent.*

in any Cause here in Court now depending or hereafter to be prosecuted, shall be received by the Clerks of the Papers of this Court, before such Pleas or Demurrers in Law shall be signed with the proper Hand of some Counsel in that Behalf retained.

And it is further Ordered that the Clerks of the Papers of this Court in all Copies of Pleadings and Paper Books by them made shall write under such Copies of Pleadings and Paper Books the Names of the Counsel who Signed such Pleadings as well on the Part of the Plaintiff as on the Part of the Defendant; and that in all Books to be delivered to the Justices of this Court the Names of the Counsel who shall Sign those Pleadings as well on the Part of the Plaintiff as on the Part of the Defendant, shall be written under those Books by the Clerks or Attorneys who deliver those Books.

*Die Martis prox' post Octab. Sanctæ. Trin. Anno 18 Car. II. Regis.*

Trin. 18 Car. I.  
1666.

*Die Mercur' prox' post Quinq; Septiman' Pasch' Anno 18 Car. II. Regis.*

Easter, 18 Car. II.  
1666.

Special Pleas. Paper Books.

*Ordinatum est per Cur' qd' nulla placita specialia seu morationes in lege in a-*

It is Ordered by the Court that no special Pleas or Demurrers in Law

*QUAM per antiquam Consuetud' bujus Cur' Regulæ ad respondend' dari & intrari debent cum Clerico Regularum bujus Cur' in omnibus Actionibus in Cur' hic prolatis & penden' Quæ quidem Cons' nuper neglect' fuit in Action' trans-*

Ejectment.

Whereas by the antient Course of this Court Rules to plead ought to be given and entered with the Clerk of the Rules of this Court in all Actions in this Court brought and depending, which Course hath lately been neglected in Actions of Trespass and Ejectment(c); [g] for

(c) If the Plaintiff does except against the Bail, he may have a Rule or Warrant for a Procedendo, unless Bail be perfected in four Days after Service of that Rule, whether in Term or Vacation. See Hil. 10 W. III. Note; Where a Cause is removed by Ha' Cor' the Plaintiff must begin de novo and declare in two Terms after the Return, for the Record is not removed on a Habeas Corpus, as it is on a Certiorari. Salk. 352. Where the Defendant removes his Cause, he cannot non-pross the Plaintiff for want of a Declaration. (b) East. 29 Car. II. — 9 W. III. 1696. Mich. 8 Ann. Note; Although it is not expressed in this Rule that Notice shall be given of Bail put in upon a Habeas Corpus, as it is of Bail on a Cepi Corpus; yet the Judges have resolved that Notice of Bail shall be given in both Cases. (c) Hil. 1649.

transgr' & Ejection' for prevention whereof for  
firmæ, pro evitatione the time to come,  
cujus in futuro,

Ordinat' est qd' qui-  
libet Attorn' hujus Cur'  
intrabit cum Clerico  
Regularum generalem  
Regulam ad respondend'  
in omni Actione Transgr'  
& Ejection' firmæ pro-  
lat' priusquam aliqua  
Motio fact' fuerit in  
Cur' pro Judicio vers'  
Casualem Ejectionem.

It is Ordered, That e-  
very Attorney of this Court  
shall enter with the Clerk  
of the Rules a general Rule  
to plead in every Action  
of Trespas and Ejectment  
before any Motion shall be  
made in Court for (a) Judg-  
ment against the casual E-  
jector.

Die Lune prox'  
post Crastinum  
Ascens. Domini  
Anno 19 Car. II.  
Regis.

East. 19 Car. II.  
1667.

Fee to the Clerk of the Declarations.

Ordinatum est per  
Cur' qd' quilibet  
Clericus Philizar' &  
Attorn' hujus Cur' sol-  
vet Officiari' hujus Cur'  
appunctuati' pro recep-  
tion' filation' & custod'  
Billarum & Narration'  
hic in Cur' affilandi  
antiquum feod' duorum  
solid' in fine cujuslibet  
Termini pro Salario suo  
pro reception' filation'  
& custod' Billarum &  
Narrationum prædict'  
secund' separati' Ordines  
hujus Cur' prius inde  
in ea parte fact'. Et si  
aliquis Clericus Philiz-  
ar' vel Attorn' hujus  
Cur' recusav'it solvere  
feod' ill' super rationa-  
bil' requisition' ei inde  
facienda tunc hujusmodi  
Clericus Philizar' &  
Attorn' suspendatur a  
privilegio practiciæ suæ  
in eadem Cur' ad Dis-  
cretionem Capital' Cle-  
rici vel Secundari' Cur'  
ill'.

It is Ordered by the  
Court that every Clerk,  
Philizar and Attorney of  
this Court shall pay to the  
Officer of this Court ap-  
pointed for receiving, filing  
and keeping Bills and De-  
clarations here in Court to  
be filed, the ancient Fee of  
2 s. at the end of every  
Term for his Salary, for the  
receiving, filing and keeping  
the Bills and Declarations a-  
foresaid according to several  
Orders of this Court former-  
ly made (b) in that behalf;  
And if any Clerk, Philizar  
or Attorney of this Court  
shall refuse to pay that Fee,  
upon reasonable Request  
made to him for that pur-  
pose, then such Clerk, Phi-  
lizar and Attorney, shall be  
suspended from the Privi-  
lege of his Practise in this  
Court, at the Discretion of  
the chief Clerk or Seconda-  
ry of this Court. (c)

Die Lune proximo  
post tres Septi-  
man' Sanctæ  
Trin. Anno 20  
Car. II. Regis.

Trin. 20 Car. II.  
1668.

Ordinatum est per  
Cur' qd' quilibet  
Clericus hujus Cur'  
Computabit separatim  
per se ad finem cujuslibet  
Termini secundum anti-  
quas regulas hujus Cur'  
inde fact'. Et qd' duo  
tres vel plures eorum-  
dem non infimul Com-  
putarent in nomine uni-  
us Clerici prout nuper  
usitat' fuit.

Et ulterius Ordinat'  
est qd' si aliquis Clericus  
hujus Cur' signaret vel  
signari permetteret ali-  
qua brevina seu affilaret  
vel affilari permetteret  
aliquos Rotulos in nomine  
suo pro aliquo alio Clerico  
hujus Cur' qui aretro ex-  
istit cum Computis suis  
in Officio tunc hujusmo-  
di Clericus qui sic signa-  
ret vel signari permit-  
teret aliqua talia brevina  
seu affilaret vel affilari  
permitteret aliquos tales  
Rotulos in nomine suo  
solvet Arrearag' Comput'  
talium Clericorum pro  
quibus aliqua talia bre-  
vina sic per ipsum signa-  
ret vel affilaret tal' Ro-  
tul' sic per ipsum affilari  
forent.

Clerks and Attorneys.  
It is Ordered by the  
Court, That every  
Clerk of this Court shall  
account severally by himself  
at the end of every Term  
according to the ancient  
Rules of this Court made in  
that Behalf, and that two,  
three or more of them shall  
not account together in the  
Name of one Clerk as late-  
ly hath been used. (d)

And it is further Order-  
ed, That if any Clerk of  
this Court shall sign or suffer  
any Writs to be signed, or  
file or suffer to be filed any  
Rolls in his own Name for  
any other Clerk of this  
Court who is in Arrear with  
his Accounts in the Office,  
then such Clerk who so signs  
or suffers to be signed any  
such Writs, or fileth or suf-  
fereth to be filed any such  
Rolls in his own Name,  
shall pay the Arrears of the  
Accounts of such Clerks for  
whom any such Writs were  
so signed by him, or any such  
Rolls were so filed by him.

De Termino Sanc-  
ti Hillarii An-  
no Regni Car. II.  
Regis 20 & 21.

Hil. 20 & 21 Car.  
II. 1668.

Ordinatum est per  
Cur' qd' Exitus  
junct' de aliquo priori  
Termino triati fuerint  
super prima vel secunda  
Sessione cujuslibet Ter-  
mini peremptorie: Et  
qd' Custos Brevium hu-  
jus

Trials.  
It is Ordered by the  
Court, that Issues joined  
of any former Term shall  
be tried the first or second  
Sittings of every Term pe-  
remptorily; And that the  
Custos Brevium of this  
Court

(a) Hil. 1649. Motion must be made in that Term wherein the Tenant had Notice to appear. Salk. 257. (1) The  
like Rule Mich. 15 Car. II. (c) The like Rule Mich. 15 Car. II. (d) Thus far is Obsolete; see Easter,  
15 Car. II.

*ius Cur' non sigillabit aliquod Recordum de Nisi prius triand' contra intentionem huius Regule.* Court shall not sign any Record of *Nisi prius* to be tried contrary to the Intent of this Rule. (a)

Trin. 22 Car. II. 1670.

Bail.

*Ordinatum est per Cur' qd' nullus Defend' qui su'it arrestat' virtute alicujus Processus e Cur' Domini Regis coram ipso Rege emanant' compulsi su'it imponere Ballium pro majori Summa quam in hujusmodi process. exprimitur.*

*Et ulterius Ordinatum est qd' si Quer' narrabit versus Defend' super aliquod Ballium per ipsum imposu' pro majori Summa quam exprimitur in process. super quo Defend' arrestat' su'it tunc Ballium sic imposu' non onerabile fuerit in Azione illa.*

**I**t is Ordered by the Court, that no Defendant, who shall be arrested by Virtue of any Process issuing out of the Court of the Lord the King before the King himself, shall be compelled to put in Bail for a greater Sum than is expressed in such Process. (b)

And it is further Ordered, That if the Plaintiff shall declare against the Defendant upon any Bail by him put in for a greater Sum than is expressed in the Process upon which the Defendant was arrested, then the Bail so put in shall not be chargeable in that Action. (c)

*Die Mercur' prox' post Octab' Pur' beat' Marie Anno 25 Caroli II. Regis.*

Hil. 25 Car. II. 1672.

Sealing Writs.

*Ordinatum est qd' Officiar' huius Cur' qui habent custodiam sigilli Cur' permittant un' vel plur' person' attendere omnibus temporibus sigillation' brevium ejusdem Cur' ex parte Dom' Regis & impression' vel signum super hujusmodi brevibus sic sigillat' vel sigilland' imponere quousq; Cur' hic ulterius ordinaverit ita qd' nullum impedimentum perinde eveniat Officiar' praed' in sigillatione brevium praedict'.*

**I**t is Ordered that the Officers of this Court who have the Custody of the Seal of the Court, permit one or more Persons to attend at all Times the Sealing of Writs of the same Court, on the Behalf of our Lord the King, and put a Stamp or Mark upon such Writ so Sealed or to be Sealed until this Court shall further Order, so that no impediment may thereupon arise to the Officers aforesaid in Sealing the said Writs. (d)

*Die Luna prox' post Octab' Sti Martini Anno 28 Car. II. Regis.*

Mich. 28 Car. II. 1676.

*Marshal and Prisoners in the King's Bench.*

*Ordinatum est qd' Mar' Marisc' huius Cur' pro tempore existens non permittet aliquam personam quamcumq; in ejus custodia remanent' super aliqua Actione vel in Executione vel pro aliquo Contemptu quocumque detent' infra dict' Prisonam vel infra Libertat' Regularum ejusdem Prisonae ire extra eandem Prisonam vel Libertat' praed' absq; speciali Regula huius Cur' in ea parte prius habit' & obtinent' periculo incumbent'.*

**I**t is Ordered that the Marshal of the *Marshalsea* of this Court for the Time being, shall not permit any Person whatsoever remaining in his Custody upon any Action or in Execution, or for any Contempt whatsoever detained within the said Prison or within the Liberty of the Rules of the said Prison, to go out of the said Prison or the Liberty aforesaid, without a special Rule of this Court in that Behalf first had and obtained, upon the Peril that may ensue. (e)

*Die Jovis prox' post tres Sept' Pasche Anno 29 Car. II. Regis.*

Easter, 29 Car. II. 1677.

*Ordinatum est per Cur' qd' nullum Ballium su'it imposu' super brevi de Habeas Corpus priusquam breve ill' su'it retornat'.*

*Et qd' quilibet Attorn' huius Cur' qui imponet aliquod speciale Ballium coram aliquo Justic' huius Cur' tempore impositionis inde deponeret in manibus Clerici Justic' coram quo hujusmodi Ballium sic su'it imposu' seod' debet' pro assilatione Ballii ill' videlicet pro quolibet ballio super brevi de Habeas Corpus 4 s. 10 d. & pro quolibet Ballio super brevi de Ce' Cor' 2 s. 6 d. Et qd' Clerici Justiciar'.*

**I**t is Ordered by the Court, that no Bail shall be put in upon Writs of *Habeas Corpus* before such Writ shall be returned. (f)

And that every Attorney of this Court, who puts in any special Bail before any Justice of this Court, at the Time of putting in thereof shall deposit in the Hands of the Justice's Clerk before whom such Bail shall be so put in, the Fee due for signing that Bail, that is to say, for every Bail upon a Writ of *Habeas Corpus* 4 s. 10 d. and for every Bail upon a Writ of *Cepi Corpus* 2 s. 6 d. And the Judges Clerks in whose Hands that Fee shall be so left, shall within six Days

(a) A former Rule Hil. 15 & 16 Car. II. (b) Stat. 12 Geo. I. cap. 29. (c) Note; The latter part in this Rule is altered, and the Practice settled by the Rule, Easter, 5 Geo. II. (d) East. 32 Car. II. (e) Stat. 8 & 9 W. III. cap. 27. (f) See Hil. 10 W. III. Mich. 1651.

ar' in quorum manibus  
feod' ill' sic impoſit', in-  
fra ſex dies prox' poſt fi-  
nem cuiuſlibet Termini  
dabunt notam in Scrip-  
tis Secundar' huius Cur'  
omnium Ballior' de Va-  
catione & Termino præ-  
ceden' ſic impoſit', una  
cum nominibus Attorn'  
qui Ballia ill' impoſuer'  
& ſolverent eidem Se-  
cundar' feod' præd' per  
ipſos pro Balliis ill' in  
forma præd' recept'.

Days next after the end of  
each Term, give a Note in  
Writing to the Secondary of  
this Court of all Bails of  
the Vacation and Term fore-  
going ſo put in, together  
with the Names of the At-  
torneys who put in thoſe  
Bails, and pay the ſaid Se-  
condary the Fee aforeſaid,  
received by them for ſuch  
Bails in manner aforeſaid.

brevia original' ema-  
nan' ante comparenc'  
deſend' ſignari debent  
per Philizar' huius Cur'  
ſecundum conſuetud' hu-  
ius Cur'.

whatſoever iſſuing upon O-  
riginal Writs before the Ap-  
pearance of the Defendant  
ought to be ſigned by the  
Philizars of this Court ac-  
cording to the courſe of this  
Court.

Die Jovis prox' poſt Oſtab' Sancti Hillar'  
Anno 30 Car. II. Regis.

Philizars.

**O**rdinatum eſt qd' referetur Magiſtro Livesay ad exa-  
minand' quæ brevia ſignari debent per Philizar' hu-  
ius Cur' antequam talia brevia ſigillari debent. (a)

Die Martis prox'  
poſt Craſtin' Pu-  
fication' beate  
Mariæ Anno 31  
Car. II. Regis.

Hil. 31 Car. II.  
1678.

Writs.

**O**rdinatum eſt  
quod Brevia  
Originalia quæ de Ju-  
re ſignari debent per  
Philizar' huius Cur' Curie  
ſignata fuerint per eoſ-  
dem Philizar' priuſ-  
quam talia Brevia ſi-  
gillentur per Officiar'  
huius Cur' Et quoad  
alia Brevia in quaſtione  
qd' referentur Magiſtro  
Aſtry & Magiſtro Live-  
ſay ad examinand' &  
ad certificand' Cur'.

**I**t is Ordered that  
by Law ought to be ſigned  
by the Philizars of this Court,  
ſhall be ſigned by the ſaid  
Philizars before ſuch Writs  
be ſealed by the Officer of  
this Court. And that other  
Writs in Queſtion be referred  
to Mr. Aſtry and Mr. Live-  
ſay, to examine and certify  
the Court. (b)

Die Sabbati poſt  
Craſtinum Af-  
cen' Dom' An-  
no 31 Car. II.  
Regis.

Eaſter, 31 Car. II.  
1679.

Philizars. Writs.

**O**rdinatum eſt qd'  
omnia brevia &  
proceſſ. quæcunque ſuper

**I**t is Ordered that all  
Writs and Proceſſes

Die Sabbati prox' Trin. 31 Car. II.  
poſt Oſtab' Stæ' 1679.  
Trin. Anno 31  
Car. II. Regis.

**O**rdinatum eſt qd'  
null' Record' de  
Niſi prius pro Triatione  
Exii' ad Affizes ſigille-  
tur poſt finem trium  
Septimanarum prox' ſe-  
quen' Clauſum Termini.

Records of Niſi prius.

**I**t is Ordered that no  
Record of Niſi prius  
for the Trial of an Iſſue at the  
Affizes ſhall be ſealed after  
the end of (c) three Weeks  
next after the end of the  
Term. (d)

Die Lunæ poſt Eaſter, 32 Car. II.  
Mens' Paſch' 1680.  
Anno 32 Car. II.  
Regis.

**O**rdinatum eſt qd'  
Officiar' huius  
Cur' qui habent cuſtod'  
ſigilli permitterent un'  
vel plur' perſon' atten-  
dere temporibus ſigilla-  
tion' brevium præd'  
Cur', & Impreſſion'  
vel ſignum ſuper bu-  
juſmodi brevia ſic ſigil-  
lat' vel ſigilland' impo-  
nere ex parte Jacobi  
Comitis Suff' quonſq;  
Cur' hic aliter ordina-  
verit ita qd' fiat abſq;  
onere aliquibus Dom'  
Regis ſubdit' ſive impe-  
diment' Officiar' præ-  
dict'.

Sealing Writs.

**I**t is Ordered that the  
Officers of this Court  
who have the Cuſtody of  
the Seal, permit one or  
more Perſons to attend at  
the Time of Sealing the  
Writs of the ſaid Court,  
and fix, on the Behalf of  
James Earl of Suffolk, a  
Stamp or Mark upon every  
Writ ſo ſealed or to be ſeal-  
ed, until the Court here  
ſhall otherwiſe Order, ſo that  
it be done without charge to  
any of his Maſteſty's Subjects  
or hindrance to the Officers  
aforeſaid. (e)

(a) See Eaſter, 31 Car. II.

(b) See the following Rule, Eaſter, 31 Car. II.

(c) See Trin. 1 Jac. II.

& Mich. 5 Ann. Tri. 10 & 11 Geo. II. (d) But this Practice at preſent is altered; for by a Judge's Order (ſor  
which you pay the Officer 2 s. and which he will procure at his Leaſure) you may have your Reco'd ſealed at any Time  
ſo & the Affizes.

(e) Hil. 25 Car. II.

Pas. 33 Car. II. East. 33 Car. II.  
Regis. 1681.

Error in the Exchequer Chamber.

**O**rdinatum est qd' regula facta Termino Sancti Michaelis ult' pret'is pro deliberatione Cop' de Err' & Record' superinde Justiciar' de Com' Banco, & Baronibus de Scaccario exoneretur.

Et qd' in futuro null' Cop' de Errore & Record' superinde deliberetur p'ced' Justiciar' vel Baronibus priusquam Attorn' pro Quer' super brevi de Error' per decem dies notitiam dabit Cleric' Error' in Camera Scaccarii qd' Error in Record' assign' argueretur coram eisdem Justic' & Baronibus pro utraq' parte Et qd' Attorn' pro Quer' deliberabit quatuor Cop' Justiciar' de Com' Banco. Et Attorn' pro Defend' deliberabit quatuor al' Cop' Baronibus de Scaccario quatuor dies ante auditum Cause.

**I**t is Ordered that the Rule made in Michaelmas Term last past for the Delivery of Copies of Error and the Records thereupon to the Justices of the Common Pleas and the Barons of the Exchequer be discharged, and that for the future no Copy of Error and Record thereupon be delivered to the said Justices or Barons before the Attorney for the Plaintiff upon the Writ of Error shall give ten Days notice to the Clerk of the Errors in the Exchequer Chamber, that the Error assigned in the Record is to be argued before the said Justices and Barons for both Parties, and that the Attorney for the Plaintiff shall deliver four Copies to the Justices of the Common Pleas, and the Attorney for the Defendant shall deliver four other Copies to the Barons of the Exchequer four Days before the hearing the Cause.

Die Lunæ post Mich. 33 Car. II.  
Quinden' Martini Anno 33  
Car. II. Regis. 1681.

Bail. Ejectment.

**O**rdinatum est per Cur' qd' Regula hujus Car' prius facta pro affiliatione Bail' observetur sub pena forisfactur' in eadem Regula mentionat'.

**I**t is Ordered by the Court that the Rule of this Court formerly made for filing Bail be observed upon the Penalty of the Forfeitures in the said Rule mentioned.

Et ulterius Ordinatum est qd' omnes Attorn' hujus Cur' qui deliberabunt vel deliberari causabunt aliquam narrationem in placito Transger' & Ejection' firmæ aliqui tenen' in possessione aliquarum terrarum seu tenement' prosequerentur brevem de Latitat' vers' casualem Ejec-torem & affilabunt commune ballium pro eodem antequam signabunt Judicium vers' Casualem Ejec-torem in aliqua tali Actione.

And it is further Ordered, that all Attorneys of this Court who shall deliver or cause to be delivered any Declaration in a Plea of Trespass and Ejectment to any Tenant in Possession of any Lands or Tenements, shall sue out a Writ of Latitat' against the casual Ejec-tor and file common Bail for him before they shall sign Judgment against the casual Ejec-tor in any such Action. (a)

Pas. 36 Caroli II. Easter, 36 Car. II.  
Regis. 1684.

Error in the Exchequer Chamber.

**O**rdinatum est qd' omnia brevicia de Error' retornabil' coram Justic' de Com' Banco, & Baron' de Scaccario in Camera Scaccarii indilate deliberentur Cler' Error' pro tempore existent' quodque nemo tenebitur abstinere a Prosecutione Executionis prætextu alitijus hujusmodi brevis de Error' priusquam breve deliberetur Cler' Error'. Et in Casibus ubi Speciale Bail' requiritur, Nisi Quer' super tali Brevis de Errore infra quatuor dies post deliberation' inde impon' Ballium secundum Legem, Defend' poterit procedere ad Executionem tali brevi non obstant'.

**I**t is Ordered that all Writs of Error returnable before the Justices of the Common Bench and the Barons of the Exchequer in the Exchequer Chamber, shall without delay be delivered to the Clerk of the Errors for the Time being, and that no Person shall be bound to forbear suing out of Execution on pretence of any such Writ of Error before the Writ shall be delivered to the Clerk of the Errors. (b) And in cases where special Bail is required, unless the Plaintiff upon such Writ of Error, shall within four Days after the delivery thereof put in Bail (c) according to Law, the Defendant may proceed to Execution notwithstanding such Writ.

[h]

RULES

(a) See Trin. 14 Car. II. and the Note there. (b) Easter, 16 Car. II. reg. 2. & Ea. 36 Car. II. (c) Mich. 5 W. & M.



## RULES and ORDERS

OF THE

## Court of King's Bench.

Die Mercurii prox'  
post tres Septi-  
man' Sanctæ  
Trin. Anno 1  
Jac. II. Regis.

Trin. 1 Jac. II.  
1685.

## Records. Rolls.

**O**rdinatum est qd' nullum Record de Nisi prius sigilletur per aliquem Officiari' hujus Cur' post duodecimam diem Julii prox' futur' quousq' exitus seu pars ejusdem intretur super Rotulum numerat' & hujusmodi exitus ostendatur Secundar' hujus Cur', & per ipsum Signat' foret & licentia fore Sigilland'. Et qd' null' Rotul' unnumerat' deliberat' sint alicui personæ nisi Cler' Capital' Cler', & non alicui alteri Attorn' sive Philizar'. Ac qd' null' Cler' Attorn' sive Philizar' imposterum irrotulabit aliquam Indentur', Scriptum, Breve de Errorre, Exit' vel morac' in lege super aliquem Rotulum Philizar'.

**I**t is Ordered that no Record of Nisi prius be sealed by any Officer of this Court after the 12th Day of July next coming, till the Issue or part thereof, be entered upon the Number Roll, (a) and such Issue be shewed to the Secondary of this Court and by him signed and licenced to be sealed. And that no Rolls unnumbered be delivered to any Person unless to the Clerks of the chief Clerk, and not to any other (b) Attorney or other Philizar. And that no Clerk, Attorney or Philizar, shall hereafter Inroll any Indenture, Writing, Writ of Error, Issue or Demurrer in Law, upon any Philizar's Roll.

Die Veneris prox'  
post Mens' Pas.  
Anno 2 Jac. II.  
Regis.

Easter, 2 Jac. II.  
1686.

**O**rdinatum est qd' super lectione alicujus Record' hic in Cur' super moratione in Lege, speciali veredict' vel brevi de Errorre & superinde dies dat' est ad audiend' Concilium ambarum partium, Libri deliberentur Justic' hujus Cur' per spatium quatuor dierum ante diem sic per Cur' appointuat' per Attorn' ex utraque parte. Et qd' Exceptiones quæ insisterentur super argumentum denotat' erunt in Margine eorundem Librorum.

**I**t is Ordered that upon Reading of any Record here in Court upon a Demurrer in Law, special Verdict or Writ of Error, and thereupon a Day is given to hear the Counsel of both Parties, the Books shall be delivered to the Justices of this Court by the Attorneys of both Parties by the space of four (d) Days before the Day so by the Court appointed. And that the Exceptions, which shall be insisted on, upon the Argument, shall be marked in the Margin of those Books.

Die Lune prox'  
post Octab' Sancti Hillar' Anno  
2 Jacobi II. Regis.

Hil. 2 Jac. II.  
1686.

**O**rdinatum est qd' quilibet Defend' non existens Executor vel Administrator qui prosecut' fuerit aliquod breve de Habeas Corpus ad removend' aliquam sectam extra aliquam inferior' Cur' imposuerit Special' Bailum in omnibus Actionibus quibuscunque (Actionibus pro scandalosis Verbis, & minutis insult' tantummodo except') Nisi un' Justic' hujus Cur' aliter Ordinaverit.

**I**t is Ordered that every Defendant not being an Executor or Administrator who shall sue out any Writ of Hal' Corp' (e) to remove any Suit out of any inferior Court shall put in special (f) Bail in all Actions whatsoever (Actions for scandalous Words and small Assaults only excepted) unless one of the Justices of this Court shall otherwise Order.

(a) Tri. 31 Car. II. See Mich. 5 Ann. & East. 7 Geo. I. (b) The Rolls are now delivered to Attorneys as well as to the Clerks of the chief Clerk. (c) Mic. 17 Car. I. Easter, 18 Car. II. (d) But the Practice for a long Time hath been to deliver the Books only two Days before the Day appointed for the Argument. (e) — 5 W. & M. 1692. Hil. 10 W. (f) The Bail are liable to all the Actions mentioned in the Return of the Ha' Corp' wherein the Plaintiff or Plaintiffs shall declare within two Terms.

A Defendant returned in Custody on a Ha' Corp' or Cepi Corp' shall not be discharged till Bail is perfected.

See Directions for laying the Venue on Removal, Reg. Mich. 1654. sect. 9. and for the Time the Defendant has to plead after Declaration delivered, see Trin. 5 & 6 Geo. II. but Note, The Practice is not yet settled, some Attorneys still following the old Method of proceeding.

Hil. 3 & 4 Jac. II. Hil. 3 & 4 Jac. II.  
Regis. 1687.

Paupers.

I. *Ordinatum est* qd' nullus ad-  
mittatur in Forma Pau-  
peris extra Cur'.

I. *It is Ordered* that  
no one be admitted in  
Forma Pauperis out of  
Court. (a)

The same Term, 1687.

Carts.

II. *Ordinatum est* qd' null' Car-  
ruca seu Draia trans-  
eant in King-street West-  
min' in Termino in-  
ter horam octavam &  
horam secundam.

II. *It is Ordered* that  
no Carts or Drays  
pass in King-street Westmin-  
ster, in Term-Time be-  
tween the Hours of Eight  
and Two.

Die Veneris prox'  
post Mens' Pasc.  
Anno 4 Jac. II.  
Regis.

Easter, 4 Jac. II.  
1688.

Warrants of Attorney.

*Quia constat* Cur'  
qd' ratione neg-  
ligentia Clericorum &  
Attorn' in non intrando  
& affiland' Warrant'  
Attorn' de Recordo di-  
versa Judicia rever-  
santur ad grave damp-  
num Magistrorum suo-  
rum.

*Ordinatum est* qd' qui-  
libet Cleric' & Attorn'  
hujus Cur' qui impo-  
stentur intrabit aliquam  
causam de Recordo intra-  
bit in principio (Angli-  
ce, the Beginning) cu-  
juslibet cause sic intrat'  
Warrant' Attorn' pro  
Quer' & Defend' in  
talibus Causis aliter  
eorum Rotuli non affi-  
lentur nec recipientur.

*Because it appeareth*  
of the Court, that by reason  
of the Negligence of the  
Clerks and Attorneys in not  
entering and filing Warrants  
of Attorney of Record, di-  
vers Judgments are rever-  
sed to the grievous Damages  
of their Clients,

*It is Ordered* that every  
Clerk and Attorney of this  
Court who hereafter shall  
enter any Cause of Record  
shall enter in the beginning  
of every Cause so entered,  
the Warrants of Attorney  
for the Plaintiff and Defen-  
dant in such Causes, other-  
wise their Rolls shall not be  
filed nor received.

## RULES and ORDERS

OF THE

### Court of King's Bench.

Die Veneris prox',  
post Crastin' Pur-  
beat' Mariae An-  
no 1 W. & M. Re-  
gis & Reginae.

Hil. 1 W. & M.  
1689.

Bail.

*Ordinatum est* per  
Cur' qd' pro quo-  
libet Judicio cogn' per  
Warrant' Attorn' Bal-  
lium affiletur pro De-  
fend' ad Warranti-  
zand' hujusmodi Judi-  
cium vel in defectu in-  
de Attorn' qui affilare  
debet Ballium ill' foris-  
faciat & solvat Pixidi  
Cur' decem solid' pro  
quolibet tali Ballio non  
affilat', & pro quolibet  
alio communi Ballio quod  
affilari debuit, & non  
affilatur, Attorn' pro  
Defend' forisfaciat &  
solvat Pixidi Cur' de-  
cem solid'. Et iidem  
respective Attorn' puni-  
antur prout Justic'  
Cur' idoneum videatur.

*It is Ordered* by the  
Court, That for every  
Judgment acknowledged by  
Warrant of Attorney, Bail  
shall be filed for the Defen-  
dant to Warrant such Judg-  
ment, or in Default thereof  
the Attorney who ought to  
file the said Bail, shall for-  
feit and pay to the Court  
Box 10s. for every such  
Bail not filed. And for every  
other Common (b) Bail which  
ought to be filed, and is not  
filed, the Attorney for the  
Defendant shall forfeit and  
pay to the Box of the Court  
10s. And the same respective  
Attorneys shall be punished  
as to the Justices of the  
Court shall seem meet.

Die Martis prox'  
post Mens' Mich'  
Anno 2 W. &  
M. Regis & Re-  
ginae.

Mich. 2 W. & M.  
1690.

Special Pleadings. (c)

*Ordinatum est* per  
Cur' in plena  
Cur' qd' nullus Attorn'  
sive Clericus attenden'  
hic in Cur' praesumat  
deliberare alicui al' At-  
torn' vel Clerico atten-  
den' hic in Cur' vel ali-  
cui

*It is Ordered* by the  
Court in full Court, that  
no Attorney or Clerk at-  
tending here in Court, pre-  
sume to deliver to any other  
Attorney or Clerk attending  
here in Court, or to any o-  
ther

(a) But now, if a Pauper make Affidavit that he is not worth 5 l. and annex the same to a Petition to the Chief Justice with Counsel's Opinion, he may be admitted out of Court. (b) See Trin. 4 W. & M. reg. 2. (c) East. 18 Car. II. Former Rules, Trin. 2 Jac. I. Trin. 16 Car. II.

cui ad personæ, vel accipere ab aliquo Attorn' vel Clerico attenden' in Cur' hic vel aliqua ad personæ, aliquod special' Placitum imponend' in Offic' Cleric' Papir' vel Copiam hujusmodi Placiti priusquam hujusmodi Placitum imposu' fuerit in Offic' Clerici Papir': Et qd' talis Copia postquam hujusmodi Placitum imponeretur fact' fuerit per Clericum in præd' Officio Clerici Papir' attenden' & signat' sub manu unius Clericorum ibidem attenden' sub pœna qd' quilibet Attorn' vel Clericus in Cur' hic attenden' forisfaciet pro prima offens. sua sic commiss. decem solid' solvend' Pixidi ad usum Pauperum. Et pro secunda offens. sua sic commiss. viginti solid' solvend' similis Pixidi ad usum Pauperum. Et pro tertia offens. sua sic commiss. qd' talis Attorn' vel Clericus expelletur e Cur' hic secund' duas priores regulas peremptor' & general' in consimili casu per Cur' in plena Cur' fact' scilicet die Mercurii prox' post tres Septiman' Sanctæ Trin' Anno Regni Dom' Jacobi primi nup' Regis Angl', &c. secundo, acetiam die Mercurii prox' post tres Sept' Stæ Trin' Anno Regni Dom' Caroli Secundi nuper Regis Angl', &c. decimo sexto.

Die Lunæ prox' post Octab' Sanctæ Trin' Anno 4 W. & M. Regis & Reginæ.

Appearance. Writs.  
I. **O**rdinatum est qd' si aliquis

ther Person, or receive from any Attorney or Clerk attending here in Court, or any other Person, any special Plea to be put into the Office of the (a) Clerk of the Papers, or a Copy of such Plea before that such Plea shall be put into the Office of the Clerk of the Papers; and that such Copy after such Plea be put in shall be made by the Clerk attending in the aforesaid Office of the Clerk of the Papers, and signed under the Hand of one of the Clerks attending there, under the Penalty that every Attorney and Clerk attending here in Court, shall forfeit for his first Offence so committed, 10s. to be paid to the Box for the use of the Poor; and for his second Offence so committed, 20s. to be paid likewise to the Box for the use of the Poor; and for the third Offence so committed that such Attorney or Clerk be expelled this Court, according to two former Rules peremptorily and generally in the like Case made by the Court in full Court, to wit, Trin. 2 Jac. I. & Trin. 16 Car. II.

Trin. 4 W. & M. 1692.

I. **I**t is Ordered that if any Defendant hath

Defend' voluntarie comperuit ad sedam aliquam Quer' in aliqua actione quacunque hic in Cur' prosequend' talis Comperenc' nullius vigoris & effectus habebitur nisi Attorn' pro tali Quer' infra quatuordecim dies post Diem hujusmodi Comperenc' prosecut' sit breve de Latitat' vel Billam Midd' ubi Defend' comoretur in Midd'.

Die Sabbati prox' post Octab' Stæ Trin' Anno 4 W. & M. Regis & Reginæ.

voluntarily appeared at the Suit of any Plaintiff in any Action whatsoever here in Court prosecuted, such Appearance shall be held of no Force or Effect, unless the Attorney for such Plaintiff sue out within fourteen Days after such Appearance a Writ of Latitat', or Bill of Middlesex, where the Defendant abides in Middlesex. (b)

Trin. 4 W. & M. 1692.

II. **C**UM Clerici & Attorn' hujus Cur' non obstan' se paralibus regulis & pœnis pro vera affilatione com' Balliorum, hujusmodi cōia Ballia affilari negligunt in magnum periculum Quer' & detriment' Capital' Clerici, pro remedio quorum,

Ordinat' est per Cur' qd' post finem hujus Terminii quilibet Clericus & Attorn' hujus Cur' qui erit Attorn' pro defend' solvet Attorn' pro Quer' super Junctione cujuslibet Exitus xviii d. pro cōi Ballio nisi idem Attorn' pro Defend' constare fac' Attorn' Quer' qd' cōi vel speciale Ballium est affilari.

Et ulterius Ordinatur est qd' quilibet Clericus pro Quer' sup' computo suo pro intrationibus solvet secundar' hujus Cur' xviii d. sic per eum recept'. Et qd' quilibet Clericus & Attorn' qui faciat in contrarium hujus reg'le in aliqua parte respective forisfaciat xs. pro quolibet de-

Bail.  
II. **W**hereas the Clerks and Attorneys of this Court notwithstanding the several (c) Rules and Penalties for the true filing of Common Bails do yet neglect to file such Common Bails, to the great Danger of the Plaintiffs, and detriment to the chief Clerk, for Remedy whereof,

It is Ordered by the Court, that after the end of this present Term, every Clerk and Attorney of this Court, who shall be an Attorney for the Defendant shall pay to the Plaintiff's Attorney upon joining of every Issue (d) 1 s. 6 d. for common Bail, unless the said Attorney for the Defendant shall make it appear to the Plaintiff's Attorney that common or special Bail is filed.

And it is further Ordered, that every Clerk for the Plaintiff on his Account for his Entries shall pay to the Secondary of this Court the 1 s. 6 d. so by him received, and that every Clerk and Attorney who shall act contrary to this Rule in any Behalf

(a) The Clerks of the Papers are now Mr. Benton and Mr. New. When the Plaintiff's Name begins with the Letter A. the special Pleadings are left with the former; if with the Letter B. then with the latter, and so alternately thro' the Alphabet. See Mich. 12 W. III. and the Note. (b) See the Note Trin. 14 Car. II. (c) Former Rules, East. 1657. Mich. 16 Car. II. (d) The Plaintiff's Attorney on the Back of the Declaration now charges 6 s. 8 d. for filing common Bail, which the Defendant's Attorney must pay on the Delivery, or on taking it out of the Office when it is there filed. Trin. 1 Geo. II.

*delicto solvend' Pixid' hujus Cur'.*

*Et ulterius Ordinatur ut qd' omnes Clerici & Attorn' pro Quer' super l'gatione Judicior' per defalt' vel non l'gatione solvent' Secundar' hujus Cur' xviii. d. pro Com' Ballio Nisi prius affilatus fuisse & illi Octodecim denar' allacentur Quer' in Custag'.*

half, shall respectively forfeit 10 s. for every such Default, to be paid to the Box of this Court.

And it is further Ordered, that all Clerks and Attorneys for the Plaintiff upon signing of Judgment by Default, or on Non sum Informatus, shall pay to the Secondary of this Court 1 s. 6 d. for the common Bail, unless it was before filed, and the said 1 s. 6 d. shall be allowed the Plaintiff in his Costs.

*Die Martis prox' post tres' Sept' Stae' Trin' Anno 4 W. & M. Regis & Reginae.*

Trin. 4 W. & M. 1692.

Sealing Writs.

**III. SUPER** querel' Officiario' pro Custod' Sigilli hujus Cur' assignat' qd' separal' Brevia a Cur' hic in debita emanaverunt absq; Sigillatione' eorundem per praed' Officiario' in defraudatione' ejusdem Sigilli.

*Ordinatur est per Cur' qd' separal' Subvic' separal' Com' hujus Regni Angl' permittent eisdem Officiario' ad scrutand' & inspiciend' omnia Brevia a Cur' hic emanata & ad delib'at' & in eorum respectu Custod' remanent' absq; aliquo scado provida solvend'.*

**HI. UPON** Complaint of the Officers appointed for keeping the Seal of this Court, that several Writs have unduly Issued out of this Court without sealing of them by the aforesaid Officers in fraud of the said Seal,

It is Ordered by the Court, that the several Under-Sheriffs of the several Counties of this Kingdom of England, permit those Officers to search and inspect all the Writs issued out of this Court and delivered to them and remaining in their respective Custodies, without any Fee to be thereupon paid.

*Die Veneris prox' post Mens' Pasch. Anno 5 W. & M. Regis & Reginae.*

East. 5 W. & M. 1693.

Bringing in Rolls.

**O**rdinatum est per Cur' (respect' habito cuidam Ad'

**IT** is Ordered by the Court, (respect' being had to a certain Act of Par-

*Parliament' super edit' pro abbreviacione' Judic' (scilicet' Docketing of Judgments) qd' omnes Clerici Capital' Clericorum hujus Cur' intulerint in Officium Capital' Clericorum praed' Rotulos suos de Terminis Pasch' ad vel ante diem Martis prox' ante prim' diem Terminis Stae' Trinitatis. Et qd' iidem Clerici intulerint in Officium praed' Rotulos suos de separabilibus Terminis Stae' Trinitatis Stae' Michaelis & Stae' Hillar' per spatium unius Septiman' ad minus ante diem Esson' cujuslibet Terminis eorundem subsequen' Terminor'. Et qd' nullus Rotulus recipiatur vel affilatur post finem secundi Terminis absq; Regula hujus Cur' in ea parte obtinend'.*

liament (a) lately made for Docketing of Judgments) that all the Clerks of the chief Clerks of this Court shall bring into the Office of the said chief Clerks their aforesaid Rolls of the Term of Easter at or before the Tuesday next before the first Day of Trinity Term, and that the said Clerks shall bring into the Office aforesaid, their Rolls of the several Terms of Trinity, Michaelmas and Hilary, by the space of one Week at least before the Essoin Day of every subsequent Term and that no Roll shall be received or filed after the end of the second Term without a Rule of this Court in that behalf obtained. (b)

*Die Mercur' prox' post quinq; Sept' Pasch. Anno 5 W. & M.*

East. 5 W. & M. 1693.

**Reg. II. Regulae** observand' in Cur' Dom' Regis & Dom' Reginae coram ipsis Rege & Regina in processu super narr' deliberand' Prisonar' in Custod' Gaoliarum, Ordinatur est prout sequitur.

**Reg. II. Rules to be observed** in the Court of our Lord and Lady the King and Queen before the King and Queen themselves, in Proceedings upon Declarations deliver'd to Prisoners in Gaol, It is Ordered as followeth.

**Q**uod nulla Copia Narration' deliberand' Prisonar' in Custod' ante diem return' processu super quo Defend' capi' vel onerat' fuit in Custod'.

*Qd' nulla Regula dai' foret qd' Defend' in Custod' compareat & placitet alicui Narration' versus eum quousq; Sacrum in Scriptis sit affilatus cum Cle-*

**T**HAT no Copy of a Declaration be delivered to a Prisoner in Custody, before the Day of the Return of the Process, upon which the Defendant was taken or charged in Custody.

That no Rule be given that the Defendant in Custody appear, and plead to any Declaration against him, till an Affidavit be filed with [i] the

(a) Stat. 4 & 5 W. & M. cap. 20. — 7 & 8 W. III. cap. 36. Trin. 10 W. III. East. 1657. See Mich. 5 Anne, reg. 1.

(b) East. 9 W. III. Mich. 9 W. III.

*Clerico Regularum de deliberatione Copiae talis Narrationis & de tempore quando & persona cui eadem Copia deliberetur & qd' Defend' arrestat' fuit vel onerat' in Custod' per processum ab hac Cur' retornabil' ante deliberationem talis Copiae & qd' tempus affilationis huiusmodi Sacramenti intret' super Sacramenti illud per Clericum Regularum. Et qd' Copia illius Sacramenti producat' coram Prothonotario vel Secundario ante signationem Iudicii.*

*Qd' si Copia Narrationis deliberetur vers' talem Defend' ante Mens' Pas. vel Crastinum Animarum & Sacramenti superinde fiat & affiletur. Et Defend' non compareat adinde infra decem dies prox' post finem Terminorum Sancti Michaelis & Pas. respective Iudicium reddetur vers' ipsum si Regule dat' fuer' sed si ipse compareat ante finem decem dierum post finem Terminum ipse habebit Licentiam interloquendi usq; prox' Termin' Nisi actio locetur in London' vel Middlesex. & Defend' sit in Custod' infra quadraginta Milliar' Civitatis London' vel Westm', tunc licet Defend' compareat ante expirationem decem dierum post finem Terminum ipse placitabit duos dies ante diem Effson' prox' Termin'. Et in defectu inde (Regulis dat' existent) Iudicium intretur vers' eum ut praedict' est.*

*Qd' si Copia Narrationis deliberetur vers' talem Defend' super vel post Mens' Pas. in*

the Clerk of the Rules, of the Delivery of a Copy of such Declaration, and the Time when, and the Person to whom the said Copy was delivered; and that the Defendant was arrested or charged in Custody, by Process from this Court returnable before the Delivery of such Copy; and that the Time of filing such Affidavit be entered upon the said Affidavit by the Clerk of the Rules, and that a Copy of the Affidavit be produced before the Prothonotary or Secondary before Signing of Judgment.

That if a Copy of the Declaration be delivered against such Defendants before the Month of *Easter*, or the Morrow of *All Souls*, and Affidavit thereof be made and filed, and the Defendant doth not appear thereto within ten Days next after the end of *Easter* and *Michaelmas* Terms respectively, Judgment may be entered against him, if Rules have been given; but if he doth appear before the end of ten Days after the Term, he shall have Liberty of Imparling until the next Term; unless the Action be laid in *London* or *Middlesex*, and the Defendant be in Prison within forty Miles of *London* or *Westminster*; then though he doth appear before the Expiration of ten Days after the End of the Term, he shall plead two Days before the Effoin-Day of the next Term; and in Default thereof, Rules having been given, Judgment may be entered against him as aforesaid.

That if a Copy of the Declaration be delivered against such Defendant, on

*Termino Pas. vel Crastini Animar' in Terminis Sti' Michaelis vel in Terminis Sti' Hillarii vel Sti' Trinitatis. Et superinde Quer' daret Regulam comparere & pro Respons. tunc si Defend' compareat infra duos dies praecedentem diem Effson' prox' Termin', ipse habeat Licentiam interloquendi usq; diem prox' Termin', sed si ipse non compareat infra tempus illud Iudicium vers' eum reddetur.*

*Qd' si Breve sit retornabil' in aliquo Termino & Copia Narrationis deliberetur ante diem Effson' prox' Termin' Quer' in tali prox' Termino possit dare Regulam ad comparandum & respondendum. Et si Defend' non compareat & placitet super effluxionem Regularum Iudicium vers' eum reddetur.*

*Qd' si Narratio non affiletur ante finem Terminum prox' postquam Breve vel Processus (per quem Prisonar' capt' fuit vel onerat' in Custod') sit retornabil' & Sacramentum fact' & affilat' modo supradict' ante finem viginti dierum prox' post talem Terminum huiusmodi Prisonar' exonerabitur per Com' Ballium signand' per un' Justic' huius Cur'.*

*Qd' si aliquis Custos Gaoler' sive Prisonae qui recepit Copiam Narrationis vers' aliquem Prisonar' in sua Custodia eandem concealabit & non statim deliberet tali Prisonar', fiat Breve de Attach' vers' eum.*

or after the Month of *Easter* in *Easter* Term, or the Morrow of *All Souls* in *Michaelmas* Term, or in *Hillary* or *Trinity* Term, and thereupon the Plaintiff gives a Rule to appear and plead; then if the Defendant appear within two Days before the Effoin Day of the next Term, he shall have Liberty of Imparling until the said next Term: But if he does not appear within that Time Judgment may be given against him.

That if a Writ be returnable in any Term, and a Copy of the Declaration be delivered before the Effoin Day of the next Term, the Plaintiff in such next Term may give a Rule to appear and plead, and if the Defendant does not appear and plead upon the Expiration of the Rules, Judgment shall be given against him.

That if the Declaration be not filed before the end of the next Term after the Writ or Process (by which the Prisoner was taken or charged in Custody) is returnable, and Affidavit made and filed in Manner aforesaid, before the end of 20 Days next after such Term, such Prisoner shall be (a) discharged by common Bail, to be signed by one of the Justices of this Court.

That if any Gaoler or Keeper of a Prison, who hath received a Copy of a Declaration against any Prisoner in his Custody, shall conceal the same, and not deliver it forthwith unto such Prisoner, an Attachment shall be issued against him.

Reg.

(a) See *Trin. 2 Geo. I. Trin. 6 Ann. for discharging Prisoners.*

Reg. III. Rules to be observ'd in his Majesty's Court of King's Bench, in Proceedings upon Declarations deliver'd to Prisoners in Gaol.

It is Ordered as followeth. (a)

Prisoners.

1<sup>st</sup>, **T**HAT no Copy of any (b) Declaration be delivered to a Prisoner in Custody, before the Day of the Return of the Process, upon which the Defendant was taken or charged in Custody.

2<sup>dly</sup>, That no Rule be given for the Defendant in Custody to appear, and plead to any Declaration against him, till an (c) Affidavit be filed with the Clerk of the Rules, of the Delivery of a Copy of such Declaration, and the Time when, and the Person to whom the same Copy was delivered; and that the Defendant was arrested or charged in Custody, by Process of this Court returnable before the Delivery of such Copy; and that the Time when such Affidavit was filed, be entred upon the said Affidavit by the Clerk of the Rules, and a Copy of such Affidavit be produced to the Prothonotary or Secondary before signing of Judgment. (d)

3<sup>dly</sup>, That upon every Arrest by mesne Process out of this Court, returnable the First Day of *Easter* or *Michaelmas* Term, if a Copy of the Declaration be delivered against such Defendants, before *Mensem Pasche*, or *Crastinum Animarum*, and Affidavit thereof made and filed; and the Defendant doth not appear before the

end of ten Days after *Easter* and *Michaelmas* Terms respectively, Judgment may be entred against him, if Rules have been given; but if he doth appear before the end of ten Days after the Term, he shall imparl until the next Term; unless the Action be in *London* or *Middlesex*, and the Defendant be in Prison within forty Miles of *London* or *Westminster*; then though he doth appear before the Expiration of ten Days after the End of the Term, he shall plead two Days before the Effoin Day of the next Term; and in Default thereof, Rules having been given, Judgment may be entred against him as aforesaid. (e)

4<sup>thly</sup>, If a Copy of a Declaration be delivered against such Defendant, on or after *Mensem Pasche* in *Easter* Term, or *Crastinum Animarum* in *Michaelmas* Term, or in *Hillary* or *Trinity* Term, and thereupon the Plaintiff gives Rules to appear and answer; then if the Defendant appear two Days before the Effoin Day of the next Term, he shall imparl until the said next Term: But if he does not appear within that Time, Judgment may be given against him.

5<sup>thly</sup>, If a Writ be returnable in any Term, and a Copy of the Declaration has been delivered before the Effoin Day of the next Term, the Plaintiff in such next Term may give Rules to appear and answer, and if the Defendant does not appear, and plead upon the Expiration of the Rules, Judgment shall be given against him.

6<sup>thly</sup>, If the Declaration be not filed before the end of the next Term, after the Writ or Process (by which the Prisoner was taken or charged

(a) This Rule was made on the Stat. 4 & 5 W. & M. cap. 21. whereby it is enacted, That if any Defendant be taken and charged in Custody at the Suit of any Person, upon any Writ or Writs out of any of the Courts at *Westminster*, and imprisoned for want of Sureties for his Appearance, the Plaintiff in such Writ may, before the end of the next Term after such Writ shall be returnable, declare against such Prisoner in the Court out of which the Writ or Writs shall Issue, whereupon such Prisoner shall be taken and charged in Custody, and may cause a true Copy thereof to be delivered to such Prisoner, or to the Gaoler or Keeper of the Prison or Gaoler in whose Custody such Prisoner shall be and remain, to which Declaration the said Prisoner shall appear and plead; but if he shall not appear and plead thereto, the Plaintiff shall in such Case have Judgment, as if the Prisoner had appeared and refused to plead. And that in all such Declarations against such Prisoners it shall be alledged in the Custody of what Sheriff, Bailiff or Steward of any Franchise or other Person having Return and Execution of Writs, such Prisoner shall be at the Time of such Declaration, which Allegation shall be as good and effectual as if such Prisoner was in Custody of the Marshal of the *Marshalsea*. Note; Before this Statute, when any Defendant was detained in Custody by Mesne Process of this Court for want of Bail, if the Plaintiff did not within two Terms cause the Defendant to be brought up by Ha' Corp', and committed so that he might declare against him in the Custody of the Marshal, the Defendant might be discharged out of Custody on common Bail or Appearance.

(b) A Bill or Declaration on double Penny stamp Parchment ought to be filed in the Office of the Clerk of the Declarations before a Copy of it on double penny stamp Paper be delivered to the Prisoner, &c.

(c) Where a Copy is delivered to a Keeper, Gaoler or Turnkey of a Gaol, it is necessary to set forth in the Affidavit, that he acknowledged that the Defendant was then a Prisoner in the said Gaol. But where the Defendant is in Custody of the Marshal, no Affidavit is required of the Delivery of such Copy, as is when the Defendant is in Custody of a Sheriff, &c.

(d) You make a Copy of the Affidavit on double Six-penny Stamp, and of the Declaration on double Penny Stamp, annex them together, and then file the Original Affidavit with the Clerk of the Rules, and take the Copy with the Declaration annexed, to the Master, and he will give a Rule thereon for the Defendants to appear and plead, which Rule the Clerk of the Rules enters in his Paper; and on Defaults thereof, Judgment may be signed.

(e) When a Bill is filed against a Prisoner in the Custody of the Marshal, if a Copy of it be delivered for him to the Turnkey, four Days exclusive before the end of the Term, a Rule to plead be given and a Plea demanded, which may be done on the back of the Copy when delivered, the Defendant shall plead as of that Term; but if the Bill be not filed and the Copy delivered four Days exclusive before the end of the Term, the Defendant may Imparl until the next Term.

charged in Custody) is returnable, and Affidavit made, and filed in Manner aforesaid, before the end of twenty Days next after such Term, the Prisoner shall be discharged by common Bail, signed by one of the Justices of this Court.

7thly, If any Gaoler or Keeper of a Prison, having received a Copy of a Declaration against any Prisoner in his Custody, shall suppress the same, and not deliver it forthwith unto such Prisoner, an Attachment shall be issued against him.

John Holt, } William Gregory,  
William Dolben, } Giles Eyre.

This Rule being a Translation of the former with some little Addition and Variation is therefore placed here, altho' by the Title it seems to have been signed by the Judges since the Death of Queen Mary.

Die Jovis prox'  
post tres Septi-  
man' Sti' Mich.  
Anno 5 W. & M.  
Regis & Reginae.

Mich. 5 W. & M.  
1693.

#### Bail on Error.

**O**rdinatum est per Cur' qd' quilibet Attorn' hujus Cur' qui prosecut' fuit aliquod Brevi de Error' ad revocand' aliquod Judicium hic in Cur' obtent' in quo speciale Bail imponi debet post impositione talis Specialis Baili dabitur notitia inde indilate Defend' in brevi de Error' vel ejus Attorn'. Et qd' si praed' Defend' non comparuerit Bailium ill' pro insufficiencia inde infra viginti dies prox' post notic' ei vel ejus Attorn' inde dat' tunc talis Recogn' allocabitur.

**I**t is Ordered by the Court, that every Attorney of this Court, who hath sued out any Writ of Error to reverse any (a) Judgment obtained in this Court, in which special Bail ought to be put in, after the putting in of such special Bail shall give (b) Notice thereof without delay to the Defendant in the Writ of Error or to his Attorney, and that if the aforesaid Defendant shall not (c) except to the said Bail for Insufficiency thereof within 20 Days next after Notice thereof given to him or his Attorney, then such Recognizance shall be allowed. (d)

2

(a) On what Judgments a Writ of Error shall be no *Superfedeas* without Bail, see Stat. 3 Jac. I. cap. 8. 13 Car. II. cap. 2. 16 & 17 Car. II. cap. 8.

(b) A Writ of Error is a *Superfedeas* from the time of the Allowance, and is Notice of its self; but if the Defendant have Notice before the Allowance, it is from the Time of that Notice a *Superfedeas*, and tho' the Allowance is a sufficient Notice to supersede the Execution, yet to bring the Attorney into Contempt, he must have had Notice.

A Writ of Execution is not legally executable any longer than whilst the Court is sitting that Day, on which the Writ is returnable, and so long as it is executable, and not executed, the Allowance of a Writ of Error is a *Superfedeas*, but not afterwards. Salk. 321.

(c) The Exception against the Bail should be entered in the Clerk of the Errors's Book, and Notice given to the Plaintiff in Error, and also a Rule for better Bail had of the Clerk of the Errors; and if the Bail do not justify, or better Bail be put in within four Days after Notice of the Rule, the Plaintiff in the Original Action may take out Execution, but the Writ of Error remains still, and the Plaintiff in Error may proceed thereon; it is only the *Superfedeas* to the Execution that is taken away. Note; The Bail cannot surrender the Plaintiff in Error.

(d) East. 16 Car. II. East. 36 Car. II. Stat. 27 Eliz.

Die Mercurii prox'  
post 15 Sti' Hil-  
larii Anno 5  
W. & M.

Hil. 5 W. & M.  
1693.

#### Prisoners.

**O**rdinatum est qd' quilibet Prisonar' qui Commisus fuit Custod' Mar' hujus Cur' virtute alicujus Brevis de habend' Corp' ad respondend' vel ad faciend' & recipiend' remanebit in actual' Custod' ejusdem Mar' per spacium duorum dierum prox' post talem Commissionem talis Prisonar' eidem Mar' non obstant' aliquo alio Brevis de habend' Corp' ad respondend' vel ad faciend' & recipiend' extra aliquam al' Cur' emanant' eidem Mar' deliberand' & allocand'.

**I**t is Ordered that every Prisoner who shall be committed to the Custody of the Marshal of this Court by Virtue of any Writ of Habeas Corpus ad respondend' or ad faciend' & recipiend', shall remain in actual Custody of the said Marshal by the space of two Days next after such Committal of such Prisoner to the said Marshal, notwithstanding any other Writ of Ha' Corp' ad respondend' or ad faciend' & recipiend' issuing out of any other Court to the said Marshal delivered and allowed.

Die Sabbati in  
quinden' Sti' Hil-  
larii Anno 6 W.  
& M.

Hil. 6 W. & M.  
1694.

#### Fines due to the King.

**O**rdinatum est qd' omnes Fines debiti' Domina Regi & Domina Reginae in Cur' ipsorum Dom' Regis & Dom' Reginae, pro aut super omnibus actionibus pro debitis & actionibus pro dampnis in Cur' praed' prosecut' recipiantur & colligantur sicut antea.

**I**t is Ordered that all Fines due to our Lord the King and our Lady the Queen in the Court of the said Lord the King and Lady the Queen for or upon all Actions for Debt and Actions for Damages prosecuted in the Court aforesaid be received and collected as heretofore.

On



On all Original Writs where the Damages laid exceed 40 l. Fines (a) are paid in the following Proportions.

|                                                | l. | s. | d. |
|------------------------------------------------|----|----|----|
| From 40 l. to 66 l. 13 s. 4 d. i. e. 100 Marks | 0  | 6  | 8  |
| 100 Marks to 100 l.                            | 0  | 10 | 0  |
| 100 l. to 200 Marks                            | 0  | 13 | 4  |
| 133 l. 6 s. 8 d. to 166 l. 13 s. 4 d.          | 0  | 16 | 8  |
| 166 l. 13 s. 4 d. to 200 l.                    | 1  | 0  | 0  |
| For every 100 Marks more                       | 0  | 6  | 8  |
| For every 100 l. more                          | 0  | 10 | 0  |

Die Veneris prox.  
post Crast. Sta.  
Trinitatis Anno  
8 W. tertii Re-  
gis.

Trin. 8 W. III.  
1696.

Scire Facias. (b)

I. **O** Rdinatum est qd' super emanatione alicujus brevis de Scire fac' super aliquam Scizam hic in Cur' penden' null Breve de alias Scire fac' superinde emanabit quousq; primum Breve de Scire fac' retornabile existit. Et si aliquod Breve de al' Scire fac' profectus fu'it in contrarium tunc hujusmodi al' Scire fac' vacuum fit.

I. **I**t is Ordered that upon issuing any Writ of Scire facias upon any Suit here in Court depending, no Writ of Alias Scire facias shall thereupon Issue, until the first Writ of Scire facias be returnable. And if any Writ of Alias scire facias shall be sued out contrary to this Rule, then such Alias scire facias shall be void. (c)

Eodem Die. The same Term.

Special Juries.

II. **O** Rdinatum est qd' super aliquam Referenc' per Cur' hic facta Secundar' hujusCur' ad retornand' aliquam Juratam seu nominand' quadraginta & octo suffic' Jur' ad triand' aliquem exit' hic ad Barr' in presentia Attorn' ambarum partium si Attorn' ex una parte defalt' fec'it ad

II. **I**t is Ordered that upon any Reference by the Court here made to the Secondary of this Court to return any Jury, or to name forty-eight sufficient Jurors (to try any Issue here at the Bar) in the Presence of the Attornies of both Parties; if the Attorney of one Side shall make Default to appear before the said

comparend' coram eodem Secundar' tempore per ipsum appunctual' pro nominatione Jur' pred' seu ad extraposition' duodecim de utraq; parte in tali Casu idem Secundar' nominabit Jur' pred' in absentia Attorn' qui defult' inde fec'it & extraponet ex iisdem quadraginta & octo Jur' duodecim ex utraq; parte. Et resid' Jur' retorn' foret per Vicecom' ad triand' Exit'.

Secondary at the Time by him appointed for the naming of the Jurors aforesaid or to strike out Twelve of either Part, in such Case the said Secondary shall name the Jury aforesaid, in the Absence of the Attorney who shall make Default thereupon, and shall strike out of the said Forty-eight Jurors Twelve on the Behalf of either Party, and the rest of the Jurors shall be returned by the Sheriff to try the Issue. (d)

Reg. 3. — 8 W. III. 1696.

Bail:

**O** R D E R S to be observed by Commissioners for taking special Bail in the Country upon Actions and Suits depending or to be depending in his Majesty's Court of King's Bench. (e) First, It is Ordered, That the Bail-piece shall be fairly drawn and ingrossed on Parchment in the Form following.

Midd' ff. **J** Ohannes Doe de A. B. Islingt' in Attorn' Com' pred' proDef. Gen. traditur in Ball' super Cepi Corp' Johanni Denn de Hackney in Com' pred' Gen. Rich' Fenn de Highgate in Com' pred' Gen. ad sectam Richardi Doe.

Middlesex, to wit, **J** OHN Doe of A. B. Atorney for the Defendant. Islington in the County aforesaid, Gent. is delivered on Bail upon a Cepi Corpus To Jo. Denn of Hackney in the County aforesaid, Gent. And to Richard Fenn of Highgate in the County aforesaid, Gent. at the Suit of Richard Doe.

Cap' & Cognit' — dis — 1696 coram A. B. un' Commissio- nar', &c.

Taken and acknowledged the -- Day of -- 1696 before A. B. one of the Commissioners, &c.

[k] And

(a) Also every Recordari, Pone, Accedas ad Cur' (except de Avertis & Catallis) Attinēt, Conspiracy, False Judgment and Vedimus Potestatem, do pay Fine to the King, 6 s. 8 d. (b) See Easter, 5 Geo. II. reg. 3. and the Note there. (c) Every Writ of Alias Sci' fa' should bear Teste the Day of the Return of the First, unless it be a Sci' fac' quare executionem non on a Writ of Error. Salk. 599. 6 Mod. 86. Every Sci' fac' by Original ought to have 15 Days inclusive between the Teste and Return, unless helped by the Stat. 16 Car. I. cap. 6. & 13 Car. II. cap. 2. But if the Proceedings are by Bill, then there must be 15 Days inclusive between the Teste of the First and Return of the Second Scire facias. Mod. Cases in Law and Equity 227, 305. Salk. 599. and each Sci' fac' should have seven Days between the Teste and Return. (d) Formerly the Secondary and Under-Sheriff (who attends with the Book of the Freeholders Names) had each a Guinea a Side from the Plaintiff and Defendant; but since the Stat. 3 Geo. II. cap. 25. the whole Charge lies on the Party applying for a special Jury. (e) Stat. 4 & 5 W. & M. cap. 4.



And in taking of the Recognizances, these or the like Words must be used, viz.

*You (calling the Bail by their Names) do jointly and severally undertake, that if the Defendant (naming his Name) shall be condemned in this Action at the Suit of the Plaintiff (naming his Name) he shall satisfy the Costs and Condemnation, or render himself into the Custody of the Marshal of the Marshalsea of the Court of King's Bench, or you will pay the Costs and Condemnation for him.*

And if any Bail be given upon any Action or Actions removed out of any inferior Court by Writ of Habeas Corpus, (a) and returnable in the Court of King's Bench, then instead of writing upon a Capi Corpus, as before, you must write upon a Writ of Habeas Corpus; and instead of writing the Plaintiff's Name (as aforesaid) you must write at the Suit of the Plaintiff in the Plaint; and the Cognizors must undertake that if the Defendant be condemned at the Suit of the Plaintiff or Plaintiffs in the Plaint, that he shall satisfy the Costs and Condemnation, or render his Body, &c. as aforesaid.

Secondly, It is Ordered, That the Affidavit for the due taking of every such Bail shall be made either before some Judge of the King's Bench, to whom the Bail shall be transmitted, or before some Person who shall have Power to take Affidavits in Matters and Causes depending in the said Court. (b)

Thirdly, It is Ordered, That all Bails taken by any Commissioner within the Distance of Forty Miles from the Cities of London and Westminster, shall be transmitted to the Lord Chief Justice of the Court of King's Bench, or to one of the Justices of the said Court, within eight Days after the taking thereof; and all Bails taken by any Commissioner above the Distance of Forty Miles from the said Cities of London and Westminster, shall be transmitted within (c) fifteen Days after the taking thereof, unless all the said Justices shall be in their Circuits, and then as soon as any one of them shall be returned to his Chamber in one of the Serjeants Inns.

Fourthly, Also every Commissioner is to have a Book kept purposely for entering the Names of the Defendant and his Bail, and of the Plaintiff, as it is in the Bail-piece, and the Time of taking thereof, and the Name of him by whom such Bail shall be transmitted; and also the Name of the Attorney for the Defendant. And,

Fifthly, It is further Ordered, That the Plaintiff's Attorney shall be at Liberty to re-

pair to the Commissioners Book for the Names of the Bail, to the end that they may inquire of the Sufficiency of them; and if they are found insufficient, they may except against them within twenty Days after the said Bail is transmitted, and Notice to the Plaintiff or his Attorney, of the taking thereof: And in that Case the Defendant must either put in better Bail, or the Cognizors of such Bails must (d) justify themselves in open Court, either (e) by Affidavit taken before such Commissioner that took the said Bail, or by Oath made in Court, or before one of the Judges of the said Court.

J. Holt, } } W. Gregory,  
W. Dolben, } } G. Eyre.

Die Lune prox' Easter, 9 W. III.  
post Crast' Ascen' 1697.  
Dom' Anno 9  
W. Regis.

*Ordinatum est qd nullus Rotulus placitorum affiletur post finem prox' subsequen' Termin' de quo affilari debuit, Nisi licentia ad hoc faciend' dat' fu'it per Regulam Cur' & Secundar' talem Regulam subscripserit.*

**Rolls.**  
It is Ordered that no Plea Roll be filed after the end of the next subsequent Term of which it ought to be filed unless Leave shall be given to do it by Rule of Court, and the Secondary shall subscribe such Rule. (f)

Die Mercurii prox' Trin. 9 W. III.  
post tres Septim' 1697.  
Stae' Trin' Anno  
9 W. tertii Reg'.

*Ordinatum est qd si Judicium reddit' sit versus aliquem Defend' existen' Prisonar' in actual' Custod' Mar' bujus Cur' si idem Defend' minime onerat' fu'it in Custod' ejusdem Mar' super eodem Judicio in Executione ante finem*

**Prisoners.**  
It is Ordered, that if Judgment be given against any Defendant being a Prisoner in actual Custody of the Marshal of this Court, if the same Defendant shall not be charged in Custody of the said Marshal upon the same Judgment

(a) Hil. 10 W. III. (b) If the Affidavit be sworn before a Commissioner, it must be drawn in Form and annexed to the Bail-piece to be filed together. (c) By Reg. Mich. 8 Ann. In all Counties except London and Middlesex the Defendant has six Days after the Return of the Process to put in Bail, and by this Rule eight to transmit it if within Forty Miles, being in all fourteen Days; if above Forty Miles, then six to take it in, and fifteen to transmit, in all Twenty-one; which Times are to be observed by the Defendant, or the Bail-Bond may be assigned. (d) See East. 5 Geo. II. for Time of justifying. (e) The Affidavit must set forth that they are Housekeepers, and are respectively worth so much (mentioning the Sum they are Bail for) after all their Debts are paid, or exclusive of all Debts or Demands, due from them to any Person or Persons whatsoever. Easter, 5 Geo. II. reg. 1. (f) See Mich. 9 W. III. & Mich. 5 Ann.

*finem Secundi Termini  
post Judicium versus e-  
undem defend' obtent'*  
(null' Brevi de Errore  
superinde pendet) qd'  
tunc Commune Ballium  
affilabitur pro tali De-  
fend' super notitiam in-  
de Attorn' pro Quer' in  
tali Judicio prius dand'.

ment before the end of the  
second Term after Judg-  
ment obtained against the  
same Defendant (no Writ  
of Error being pending  
thereupon) that then com-  
mon Bail shall be filed for  
such Defendant upon Notice  
thereof first given to the  
Attorney for the Plaintiff in  
such Judgment. (a)

*Die Sabbati prox'  
post Octab' Sti'  
Martini Anno 9  
W. tertii Regis.*

Mich. 9 W. III.  
1697.

Rolls.

**O**rdinatum est qd' omnes & singuli Cler' Capital' Cleric' hujus Cur' intulerint se-  
parales Rotulos de hoc  
instante Termino ante  
diem Eoffon' prox' Ter-  
mini, Ita qd' affilantur  
de isto Termino Actiam  
Rotulos de Termino  
Sancti Hillarii ante di-  
em Eoffon' Termini  
Pasche prox' sequen'  
Et Rotulos de Termino  
Pasche prox' sequen'  
ante finem Termini  
Sanctae Trinitatis prox'.  
Et Rotulos de Termino  
Sanctae Trinitatis ante  
diem Eoffon' Term'  
Sancti Michaelis prox'  
ad affiland' similibiter.  
Et sic quolibet Termino  
successive: Et qd' nulli  
Rotuli de caetero recipi-  
antur post separalia tem-  
pora supradicta absq;  
Special' Reg' Cur' in  
contrar' obtinend'.

**I**t is Ordered that all  
and singular the Clerks  
of the chief Clerk of this  
Court shall bring in the se-  
veral Rolls of this present  
Term before the Eoffon-day  
of the next Term, so that  
they may be filed that  
Term, and also the Rolls of  
Hillary Term before the  
Eoffon-day of Easter Term  
next following, and the  
Rolls of Easter next follow-  
ing before the end of Tri-  
nity next, and the Rolls of  
Trinity Term, before the  
Eoffon-day of Michaelmas  
Term next, to be filed in  
like Manner, and so in e-  
very Term successively, and  
that no Rolls for the future  
be (b) received after the se-  
veral Times aforesaid, with-  
out a special Rule of Court  
to the contrary be obtain-  
ed. (c)

*Die Veneris prox'  
post Crast' Stae'  
Trin' Anno 10  
W. tertii Regis.*

Trin. 10 W. III.  
1698.

**O**rdinatum est qd' omnes & singuli Cler' Capitalis Cleric' hujus Cur' intulerint Rotulos de quolibet Term' Pasche hic in Cur' ante primum diem ejuuslibet Termini Sanctae Trinitatis, Ita qd' iidem Rotuli affilantur.  
Et uli' ordinat' est qd' separal' Rotuli de uli' Termino nondum affilat' prolatis erint hic in Cur' indilate per se-  
paral' Clericos praed', ita quod tal' Rotuli af-  
filantur de eodem Ter-  
mino.

**I**t is Ordered, that all  
and singular the Clerks  
of the chief Clerk of this  
Court shall bring in the  
Rolls of every Easter Term  
here in Court before the first  
Day of every Trinity Term,  
so that those Rolls be filed.  
And it is further Order-  
ed, that the several Rolls of  
the last Term not yet filed  
shall be brought here in  
Court without delay by the  
several Clerks aforesaid, so  
that such Rolls be filed of  
the same Term. (d)

*Die Jovis prox'  
post Octab' Stae'  
Trin' Anno 10  
W. tertii Regis.*

Hil. 10 W. III.  
1698.

**O**rdinatum est qd' null' Ballium su'it imposit' super ali-  
quo Brevi de Hab'  
Corp' priusquam Breve  
illud su'it retornat'.  
Et qd' tale Ballium non  
capt' su'it per aliquem  
Justiciar' hujus Cur'  
Nisi Breve ill' cum re-  
torn' inde oblat' su'it  
coram Justiciar' praed'  
tempore Impositionis inde  
ad affiland'.

**I**t is Ordered that no  
Bail shall be put in up-  
on any Writ of Habeas Cor-  
pus before that Writ be (e)  
returned, and that such Bail  
shall not be taken by any  
Justice of this Court, unless  
that Writ with the Return  
thereof shall be offered be-  
fore the said Justice to be  
filed at the Time of putting  
in thereof. (f)

Die

(a) See Trin. 2 Geo. II. Former Rule Easter, 16 Car. II. (b) The Custos Brevium now indulges the Clerks by attending the Day but one before every Term, except Trinity when he attends the Day preceding that Term, to receive and file their Rolls. (c) See Trin. 10 W. III. & Mich. 5 Anne. (d) See Mich. 9 W. III. & Mich. 5 Ann. (e) At the Return of the Writ the Plaintiff may have a Rule for a Procedendo, unless the Defendant put in Bail in four Days after Notice of the Rule, if in Term.

If in the Vacation, then a Rule or Warrant for a Procedendo, unless good Bail be put in within six Days after Notice thereof. See Mich. 16 Car. II.

(f) See East. 29 Car. II. Hil. 2 Jac. II. 8 W. & M. 1696. reg. 3. Mich. 1651.

*Die Mercur' prox'  
post quinq; Sep-  
timan' Pasche  
Anno 11 W. ter-  
tii Regis.*

East. 11 W. III.  
1699.

Demurrer, Paper Books

**I.** *Ordinatum est qd si aliquis Querens hic in Cur morabitur in lege alicui placito reijunctioni vel rebutter per aliquem Defend' hic in Cur exhibit' & talis Defend' jungit in tali moratione in lege qd tunc Attorn' pro Quer' intrabit de Recordo talem moration' in lege. Et in defect' inde super Regulam per Secundar' hujus Cur' dat' pro intration' talis morationis in lege Attorn' pro Defend' intrabit de Recordo talem morationem.*

**I.** *It is Ordered that if any Plaintiff here in Court shall Demur in Law to any Plea, Rejoinder or Rebutter by any Defendant here in Court exhibited, and such Defendant joins in such Demurrer in Law, that then the Attorney for the Plaintiff shall enter of Record such Demurrer in Law, and in Default thereof, upon a Rule given by the Secondary of this Court for entering of such Demurrer in Law, the Attorney for the Defendant shall enter of Record such Demurrer. (a)*

*Eodem Die.* The same Term.

Bail.

**II.** *Ordinatum est qd in aliqua Actione hic in Cur prolat' ubi Defend' secund' Cursum hujus Cur' Special' Ballium imponere debet qd talis Defend' in separabilibus Terminis Sti' Hillarii & Sti' Trinitat' habebit licentiam ad imponend' sufficiens Ballium ad Sectam alicujus Quer' ante diem Continuation' per Secundar' hujus Cur' appunctuand', post Clausum Terminor' præd'. Et qd infra tempus præd' Quer' non prosecut' fuit aliquem Process. versus Defend' vel ejus manu-*

**II.** *It is Ordered that in any Action brought in this Court where the Defendant according to the Course of this Court ought to put in special Bail, that such Defendant in the several Terms of St. Hillary and the Holy Trinity, shall have leave to put in sufficient Bail at the Suit of any Plaintiff, before the Day of Continuance by the Secondary of this Court to be appointed after the end of the aforesaid Terms. And that within the Time aforesaid the Plaintiff shall not sue any Process against the Defendant or his Bail, upon the Bail-*

*captore. sup' Scriptum obligator' Vic' vel Ball' libertat' dat' pro comparent' Defend'.*

*Et ulterius Ordinatum est qd in separabilibus Terminis Sti' Michaelis & Pasche si Defend' arrestat' fuit infra Civit' London' vel Comit' Midd' super aliquem Process. extra Cur' hic emanant' qd Defend' habebit licentiam ad imponend' sufficiens Ballium ad Sectam Quer' ad aliquod tempus infra octo dies prox' post retorn' hujusmodi Brevis vel præcept' & infra quatuordecim dies prox' post retorn' alicujus Brevis in aliquo al' Comit'at' prosecut'.*

Bond given to the Sheriff or Bailiff of a Liberty, for the Appearance of the Defendant.

And it is further Ordered that in the several Terms of St. Michael and Easter, if the Defendant shall be arrested in London or Middlesex, upon any Process issuing out of the Court here, that the Defendant shall have leave to put in sufficient Bail at the Suit of the Plaintiff, at any Time within eight Days next after the Return of such Writ or Precept, and within fourteen Days next after the Return of any Writ sued in any other County. (b)

*Die Jovis post  
Craftin' Pur'  
beat' Marie Anno  
11 W. tertii.*

Hil. 11 W. III.  
1699.

**O** *Ordinatum est qd omnia facta & Indentur' in Cur' hic vel coram aliquo Justiciar' hujus Cur' cognit' de cetero imperpet' irrotulentur inter Rotulos Capitalis Clerici hujus Cur' ad placita irrotuland' assign' & non alibi. Quodq; qualibet persona aliquod tale fact' vel Indentur' imposterum in Cur' hic irrotuland' cognoscen' comparebit publice in Cur' & hujusmodi factum vel Indentur' cognoscet in aperta Cur' quodq; quodlibet factum cognit' coram aliquo Justic' extra Cur' prolat' fuit hic in Cur' per hujusmodi Justic' propriis manibus ad irrotuland'.*

*Involment of Deeds.*

**I** *It is Ordered that all Deeds and Indentures acknowledged here in Court or before any Justice of this Court for the future, shall be inrolled among the Rolls of the chief Clerk of this Court assigned to inroll Pleas and not elsewhere, and that every Person acknowledging any such Deed or Indenture hereafter in Court to be inrolled, shall appear publicly in Court and acknowledge such Deed or Indenture in open Court, and that every Deed acknowledged out of Court before any Justice, shall be brought here into Court by such Justice to be inrolled.*

Trin.

(a) If the Plaintiff Demurs, or takes Issue on the Defendant's Plea, Rejoinder or Rebutter, and the Defendant in Case of a Demurrer joins therein, and the Plaintiff will not make up the Book and enter it on Record, the Defendant may pursuant to this Rule make up the Book and enter it; and when he has made up the Book he must deliver it to the Plaintiff and pay him for the Entry of his the Defendant's Pleadings, because the Plaintiff may perhaps enter the Issue, as he has a Right to do at any Time before the Expiration of the above mentioned Rule given by the Secondary, which Rule ought to be served on the Plaintiff at the same Time the Book is delivered to him. If the Plaintiff does not enter the Issue, the Defendant may, at the Expiration of the Rule, and give Notice of Trial by Proviso; but then the Plaintiff ought to return to the Defendant the Money he received from him for the Entry on his Part. (b) *The Practice altered by a Rule made Mich. 8 Ann.*

Trin. 12 W. III. 1700.

Declarations, Issues, Demurrers.

*Whereas the Defendants Attorneys, and others, who have appeared for Defendants in this Court, and to whom Declarations have been delivered by the Course of the Court, do make Copies of the said Declarations, and charge their Clients 4 d. per Sheet for every such Copy, and afterwards do frequently pretend they have either lost the same, or willfully refuse to deliver back to the Plaintiff's Attorney such Declarations when called for, which they ought to do, whereby many Inconveniencies and manifest Delays have been, and daily do happen to the Plaintiffs Proceedings; for Remedy whereof,*

*It is ordered, That from and after the first Day of next Michaelmas Term, upon the Appearance of any Attorney, or other Person, for any Defendant in this Court, the Plaintiff's Attorney shall not be bound to deliver to the Defendant's Attorney the Original Declaration; but instead thereof, shall deliver a true Copy of such Declaration, and that upon the Delivery, or Tender thereof, the Defendant's Attorney, or other Person acting for him, shall pay unto the Plaintiff's Attorney, or other Person acting for him, for the Copy of such Declaration, after the Rate of 4 d. (a) per Sheet Copyways, together with the Stamps or King's Duty thereon, which shall serve and be in lieu of the Copy of such Declaration usually made by the Defendant's Attorney: And that upon pleading any General Issue or General Demurrer to any Declaration before any special Demurrer or special Plea pleaded, the Plaintiff's Attorney shall and may deliver unto the Defendant's Attorney a Copy of such (b) Issue or Demurrer, who shall pay for the same after the Rate of 4 d. per Sheet Copyways, and also for the Stamps thereon. And if any Attorney, or other Person, shall refuse to pay for the Copy of any Declaration so as aforesaid tendered, the Plaintiff's Attorney shall and may leave the said Copy of such Declaration in the (c) Office, with the Clerk that keeps the Files of Declarations of this Court, who shall receive the same without Fee or Reward; and thereupon the Plaintiff's Attorney, giving Rules to plead, may for want of a Plea sign Judgment; and before any Plea shall be received, the Defendant's Attorney shall pay for the (d) Copy of such Declaration, and*

the Stamps as aforesaid. And in case the Defendant's Attorney shall not pay for the Copy of any General Issue or Demurrer, so as aforesaid joined, and also for the Stamps, the Plaintiff's Attorney may sign Judgment, as if no Plea or Demurrer had been given or pleaded.

J. Holt. Jo. Turton. H. Gould.

## RULES and ORDERS

OF THE

### Court of King's Bench.

*Die Jovis prox'  
post tres septi-  
man' Sta' Trin'  
Anno 1 Annæ  
Reginæ.*

Trin. 1 Anne,  
1702.

*I. O*rdinatum est  
*qd' si aliqua  
persona sive personæ  
existen' vel imposterum  
devenien' Pleg' sive  
manucaptor' in Cur' hic  
pro aliquo Defend' in  
aliqua Actione quacun-  
que & implitat' fue-  
rint per Actionem De-  
biti super Recogn' in  
huiusmodi Secta cognit'  
huiusmodi persona sive  
personæ habebunt licen-  
tiam ad reddend' huius-  
modi Defend' Custod'  
Mar' huius Cur' in exone-  
ratione manucaptor' su-  
or' per spatium octo die-  
rum integror' in pleno  
Termino prox' post re-  
torn'*

*Bail.*  
**I**f is Ordered, That if any Person or Persons being, or that hereafter shall become Bail or Manucaptors in this Court, for any Defendant in any Action whatsoever; and shall be impleaded by Action of Debt upon the Recognizance, in such Suit acknowledged; such Person or Persons shall have Liberty to render such Defendant into the Custody of the Marshal of this Court in Discharge of his Bail; by the Space of eight intire Days in full Term, next after the Return of the Writ of *Latitat*,  
[1] or

(a) 4 d. per Sheet (computing 72 Words to a Sheet) and Duty. (b) The Attornies of this Court make up the Issue and Demurrer Books in the following Cases, viz. Every Issue that may be given on the Book Side. Not Guilty to a new Assignment, the Bar of Son frank Tenement, Compernit ad diem to a Sheriff's Bond. Nul tiel Record to an Action of Debt on a Judgment. A General Demurrer to a Declaration: In Covenant where the Defendant in his Bar concludeth to the Country. Every Special Non est factum, every Son assault demesne, and likewise all Issues and Demurrers upon Writs of Error, Scire facias & Audita querela, and all Repleaders or other Things formerly entered of Record. In all other Cases both by Bill and Originall the special Pleadings are to be left with the Clerks of the Papers, who make Copies thereof, and when Issue is joined the Paper Books are made up by them. (c) And give Notice thereof: see Trin. 2 Geo. II. (d) Judgment may be signed for not taking the Declaration out of the Office.

torn' Brevis de Latitas  
vel al' Process. versus  
hujusmodi manucaptor'  
prosecut'. Et super no-  
titiam inde dat' Quer'  
vel ejus Attorn' in Sec-  
ta præd' cess. omnis ul-  
terior Process. versus  
hujusmodi Pleg' five  
manucaptor' super Re-  
cogn' præd'.

or other Process sued out  
against such Bail; and upon  
Notice thereof given to the  
Plaintiff, or his Attorney,  
(in the Suit aforesaid) all  
further Proceedings against  
such Bail or Manucaptors up-  
on the Recognizance afore-  
said, shall cease. (a)

Die Mercurii prox'  
post tres Septi'  
Sic Trin 3 An-  
no Annæ Re-  
ginæ.

Trin. 3 Anne,  
1704.

Eodem Die. The same Day,  
1702.

Bail.

II. **O**rdinatum est  
qd' ubi aliquis  
Defend' in aliqua Ac-  
tione hic in Cur' pen-  
den' reddis' su'it Custod'  
Mar' hujus Cur' in  
exoneratione manucap-  
tor' suor' Attorn' pro  
tali Defend' indilate  
dabit notitiam de tali  
redditione Attorn' pro  
Quer' & præstabit  
Sacramentum inde pri-  
usquam Bail' in Actio-  
ne illa fuit affilat' seu  
exonerat' & in defectu  
inde talis redditio vacua  
erit.

II. **I**t is Ordered, That  
where any Defendant  
in any Action here in Court  
depending, shall be (b) ren-  
dered into the Custody of  
the Marshal of this Court in  
Discharge of his Manucap-  
tors, the Attorney for such  
Defendant shall without De-  
lay give (c) Notice of such  
rendering to the Plaintiff's  
Attorney, and shall make  
Affidavit thereof before the  
Bail in that Action shall be  
filed or discharged, and in  
Default thereof such Ren-  
dering shall be void.

**O**rdinatum est qd'  
ubi aliqua per-  
sona reddet se in Cur'  
hic vel coram uno Ju-  
stic' hujus Cur' in exo-  
neratione manucaptor'  
suorum vel du' su'it  
super Breve de Hab'  
Corp' hic in Cur' vel  
coram Justic' præd' in  
ordine ad committend'  
Custod' Mar' hujus Cur'  
tale Reddidit se vel Bre-  
ve de Hab' Corp' una-  
cum retorn' inde reman-  
eat cum Secundar' bu-  
jus Cur' vel Clerico Ju-  
stic' coram quotalis per-  
sona reddis' vel du'it  
su'it fore affiland'. Et  
qd' Copia sive nota tan-  
tum talis reddition' vel  
retorn' Brevis de Hab'  
Corp' sub manu talis  
Justic' vel Secundar'  
deliberat' su'it Mar'  
hujus Cur' tempore com-  
miss'. talis persone Cu-  
stod' sue. Et talis Co-  
pia sive nota fact' &  
preparat' su'it per per-  
sonam sic se reddent' vel  
prosequen' tale Breve  
de Hab' Corp' vel per  
Attorn' suum ex parte  
sua.

**I**t is Ordered, That  
where any Person shall  
render himself here in Court  
or before one of the Justices  
of this Court in Discharge  
of his Manucaptors, or shall  
be brought here in Court  
upon a Writ of Habeas  
Corpus, or before the  
Justices aforesaid, in order  
to be committed to the  
Custody of the Marshal of  
this Court, such Reddidit se  
or Writ of Habeas Corpus,  
together with the Return  
thereof, shall be left with  
the Secondary of this Court,  
or the Judge's Clerk before  
whom such Person was ren-  
dered or brought to be filed;  
and that a Copy or Note  
of such Rendering or Return  
of the Writ of Habeas Cor-  
pus under the Hand of such  
Justice or the Secondary,  
shall be delivered to the  
Marshal (d) of this Court  
at the Time of the Com-  
mitment of such Person to  
his Custody; and such Co-  
py or Note shall be made  
and prepared by the Person  
so rendering himself or pro-  
secuting such Writ of Habeas  
Corpus, or by his Attorney  
on his Behalf.

Bail.

Mich.

(a) If a Writ of Error be brought on the Judgment in the Original Action, the Court will stay Proceedings upon the Scire facias against Bail, till the Determination of the Writ of Error, upon the Bail's Undertaking to render the Defendant into the Custody of the Marshal, or pay the Money recovered, if Judgment be affirmed, within four Days next after the Affirmance thereof, and likewise agreeing to bring no Bill in Equity. East. 8 Geo. II. Myer v. Arthur.

(b) Bail may take the Principal on a Sunday, and render him the next Day. 6 Mod. 231.

(c) If Bail render the Principal at or before the Return of the Alias Scire facias, it is good tho' there be no immediate Notice to the Plaintiff; but if thro' want of Notice the Plaintiff proceeds further against the Bail, they shall not be delivered till they pay such Charges. Mich. 3 Ann. 6 Mod. 238. So if the Bail-piece be filed without being first discharged by the Secondary, the Bail remain liable tho' the Defendant be actually in Prison. See Salk. 98. Mod. Ca. in Law and Eq. 282, 340. In Strictness of Law on a Non est inventus returned on the Capias ad Satisfaciendum awarded and filed, the Bail are liable tho' the Principal should then die. Mod. Ca. in Law and Eq. 31. For it is by the Grace and Favour of the Court, that they have Time to render the Defendant on or before the Return Day of the second Scire facias, sedente Curia, or of the first where a Scire feci is returned. See Trin. 8 W. III. East. 5 Geo. II. If the Bail at any Time after the Return of the Ca' Sa' render the Principal at a Judge's Chambers, and be thereupon committed to the Tipstaff from whom he Escapes or is Refused, that will not be a good Rendering, because it is an Indulgence of the Court to the Bail, to render after a Capias returned. 6 Mod. 238.

(d) It is usual to make an Entry of the Render in the Marshal's Book kept in the King's Bench Office. See Salk. 272. When the Principal is surrendered, get a Certificate from the Prison, that the Defendant is in Custody, and thereupon the Master will discharge the Bail-piece; for till that is discharged, the Bail are liable. And see the foregoing Rule.

Mich. 3 Anne, 1704

Attornies.

*Whereas divers Complatnts have been made to us, that many Attornies and Clerks of the several Courts at Westminster are not admitted of any of the Inns of Court or Chancery, according to (a) ancient Course and Usage by which they might be resorted to, and Business of Law better managed to the greater Ease of the Queen's Subjects, the Neglect whereof is to the great Detriment and Decay of the Societies of the Law, and divers Inconveniencies do thereupon daily happen; for Prevention whereof, and to establish a Remedy for the future,*

It is ordered by the Judges of the several Courts of Queen's Bench and Common Pleas, and the Barons of the Court of Exchequer at Westminster, That all Attornies and Clerks of the said Courts not already admitted into one of the Inns of Court or Chancery shall procure themselves to be admitted into one of the said Inns of Court (if those Honourable Societies shall please to admit them) or into one of the Inns of Chancery before the End of Trinity Term now next ensuing, and take Chambers there (if conveniently they may be had) else that they take Lodgings in some convenient Place near the said Inns, and leave Notice in Writing with the Butler or Porter of such Inn whereof they are admitted, where their Lodgings or Habitations are, except such Persons who are or shall be hereafter Inhabitants or House-keepers in London, Westminster, Southwark, or the Suburbs thereof, and Liberty of the Tower of London and St. Katherine's there, and such who are sworn Attornies of any Courts within the said Cities, Town and Liberties.

And it is further hereby ordered, That for the future no Person whatsoever shall be sworn an Attorney, or admitted or entered a Clerk of any of the said Courts, or Offices thereunto belonging (except the Persons before excepted) unless first admitted of one of the Inns aforesaid, and bring and produce at the Time of his being (b) sworn an Attorney, or admitted, or entered a Clerk as aforesaid, a Certificate under the Hand of the Treasurer or Principal of the Inn whereof he is admitted, which they are respectively to give without being paid any Thing for the same, testifying such his Admission; which Certificate every Attorney or Clerk so sworn of the said Court of Queen's Bench shall deliver to the Secondary of the said Court, and every Attorney so sworn of the Court of Common Pleas shall deliver to the Clerk of the Warrants of the said Court, and every Clerk of the said Court so admitted or entered shall deliver to the respective Prothonotary, of whose Office he shall

be admitted, and every Attorney so sworn of the said Court of Exchequer, or Clerk seated in any of the Offices belonging to the said Court, shall deliver to the Queen's Remembrancer, or his Deputy for the Time being, to be by the said respective Officers filed before the Name of such Attorney shall be entered into the Roll of Attornies, or such Clerk admitted, entered, or seated as aforesaid; unto which file of Certificates the respective Treasurers and Principals of the said Inns of Court and Chancery shall or may from Time to Time resort, as they shall see cause, without paying any thing for the same.

And it is further ordered, That no Attorney already sworn, or Clerk already admitted, entered or seated, or which hereafter shall be sworn, admitted, entered or seated, and which are or shall be admitted into any of the Societies aforesaid, shall put himself out of the Society whereof he is or shall be admitted, until he be admitted of some other of the said Societies, and deliver to the Treasurer or Principal of such Society whereof he was first a Member a Certificate in Writing signed by such Treasurer or Principal, testifying his being admitted of such other Society, except such Person shall totally leave off, the Practice of the Law, as an Attorney or Clerk in any of the said Courts.

And whereas by the Usage, Custom or Orders of the Inns of Chancery, the Members thereof were obliged to and did come into Commons and continue therein, according to the Orders of such Society, to their great Ease in transacting their Causes one with another, and much Benefit to their Clients; but of late most or a great Number of the said Attornies and Clerks have neglected to come into Commons or continue therein according to the respective Orders of the said Inns of Chancery, to the great Decay and Detriment of those Societies.

It is further ordered, That from the End of this present Term, the Attornies and Clerks which now are, or shall be admitted into any of the Inns of Chancery, do and shall come into and continue in Commons for the Time or Times as by the Orders of such Society whereof they are or shall be admitted, is, are, or shall be ordered, limited or appointed for them so to do; and in case any Attorney or Clerk aforesaid shall offend against this Rule or any Part thereof, such Attorney shall be put out of the Roll of Attornies, and such Clerk so offending shall be discharged and displaced from such Office to which he belongs, until he or they give Obedience to this Order. And the Secondary of the said Court of Queen's Bench, and the respective Prothonotaries and Clerk of the Warrants of the Court of Common Pleas, and the Queen's Remembrancer of her Court of Exchequer, or his Deputy for the Time being, and all other

Officers

(a) Former Rules, Mich. 1654. Trin. 29 Car. II. Mich. 36 Car. II. (b) No Person can Practice as an Attorney, unless he has served five Years, and is sworn, admitted and enrolled, pursuant to the Stat. 2 Geo. II. cap. 23.

Officers whom it may concern, are hereby required to give Obedience to this Order, and see that the same, as to themselves be duly observed.

And for the more effectual and better putting in Execution this Order, and that it may procure the good hereby designed and intended;

It is hereby further Ordered, That the respective Treasurers and Principals of the Inns of Chancery, and the Ancients, Rulers and Governors of the same do and shall from Time to Time, by such Ways and Means as they shall see fit and convenient, procure and get a List of the Names of such Attornies and Clerks of the said respective Courts who are not admitted of any of the said Inns of Court or Chancery, which List the said Treasurers and Principals, Ancients, Rulers and Governors shall yearly in Michaelmas Term deliver unto the Right Honourable the Lords Chief Justices and Lord Chief Baron of the said respective Courts for the Time being, to the Intent the Offenders against this Order may be compelled to give Obedience to the same.

And it is also hereby further Ordered, That the said Treasurers, Principals, Ancients, Rulers, and Governors, in like manner procure and get a List of the Names of such Persons as take upon them to practice as Attornies or Clerks in any of the said Courts who are neither sworn Attornies, or admitted, entred or seated Clerks in any of the Offices of the said Courts, which List is to be delivered as above, to the Intent that such Offenders may be proceeded against in such Manner as shall be thought fit.

|              |   |               |   |             |
|--------------|---|---------------|---|-------------|
| John Holt,   | { | John Powell,  | { | R. Tracy,   |
| Tho. Trevor, |   | Lit. Powis,   |   | Tho. Berry, |
| Edw. Ward,   |   | Jo. Blencowe, |   | Ro. Price,  |
| Edw. Nevill, |   | H. Gould.     |   | J. Smith.   |

I

Die Martis prox'  
post Octab' Sancti  
Martini Anno  
quarto Annæ  
Reginæ.

Mich. 4 Anne,  
1705.

Notice of Trial.

**O**rdinatum est quod si Defend' in aliqua Actione in London' vel Midd' & ad Session' Domini Capitalis Justic' huj' Curtriand' intrabit ne recipiatur & Ratio ne inde impediatur Quer' quod non procedere possit ad eandem Session' quod tunc bene licuit eidem Quer' ad procedend' ad triationem in Causa prædicta ad prox' Session' dicti Capitalis Justic' post Intrationem de præd' ne recipiatur super Notic' durante prædicta prima Sessione dand'.

**I**t is Ordered, That if the Defendant in any Action in London or Middlesex, and to be tried at the Sitzings of the Lord Chief Justice of this Court, shall enter a Ne recipiatur and by reason thereof hinder the Plaintiff that he cannot proceed at that (a) Sitting, that then it shall be lawful to the said Plaintiff to proceed to Trial in the said Cause at the next Sitting of the said Chief Justice after the entring of the said Ne recipiatur, upon Notice (b) given during the said first Sitzings. (c)

Die

(a) But if a Cause is to be tried at the Sitzings after Term, no Ne recipiatur can be entred, until after Proclamation made by Order of the Chief Justice for bringing in the Records; and then if the Record be not brought in, the Defendant's Attorney may enter a Ne recipiatur.

(b) Notice is to be given before the Rising of the Court. See Hil. 15 & 16 Car. II.

(c) Likewise if Notice of Trial be given for a Day certain in London or Middlesex, and the Plaintiff is not ready to proceed, the Cause may be tried the next Sitting, upon the like Notice, as when a Ne recipiatur is entered by the Defendant; and in either Case, if the Cause be not tried at such next Sitting, Notice is to be given as at first, unless it be made a Remanet, and then new Notice of Trial is never given; for the Defendant is bound to attend till the Cause be tried.

All Notices of Trial or of executing Inquiry and Countermands ought to be in Writing.

Eight Days exclusive is sufficient Notice of Trial or of executing Inquiry in all Cases, except Causes in London and Middlesex, where the Defendant lives above forty computed Miles from London, then fourteen Days Notice must be given; and likewise except Causes wherein no Proceedings have been had within four Terms after Issue joined, then a Term's Notice must be given, and so likewise by proviso, unless the Cause has been stayed by Injunction or Privilege.

Sunday is to be accounted a Day in these Notices, so it be not the Day on which the Notice is given. Mod. Cases in Law and Equity 21.

Notice of Trial must be given by the Defendant to the Plaintiff in all Causes by proviso, Easter, 1651. and if the Defendant does not proceed according to his Notice, or Countermand in Time, the Plaintiff shall have his Costs.

Two Days Notice of a Countermand of Trial is sufficient, unless it be of a Trial at the Assizes, and the Countermand is given to the Agent in Town, in which Case it ought to be given four Days before the Commission Day.

If the Plaintiff does not proceed to Trial, or Countermand in Time, the Defendant, on Affidavit of Attendance and necessary Expences, shall have his Costs, to be taxed by the Secondary. Mich. 1654. sect. 18. But alibi the Plaintiff does not proceed to Trial, whereby Costs are taxed for the Defendant, and afterwards gives new Notice of Trial, yet the Court will not stay the Trial for not paying those Costs, (except in Ejectment) because the Defendant hath another Remedy to recover them.



If the Plaintiff does not try his Issue within the Time he ought by the Course of the Court, the Defendant having given a Rule for the Plaintiff to enter his Issue, (if not already entered) and the Issue being entered, may have a Venire by proviso and try the Cause. If the Plaintiff does not enter his Issue within the Time allowed by the Rule, he shall be nonsuited, and the Defendant shall have his Costs.

The Plaintiff must enter his Issue if the Action be laid in London or Middlesex, and bring the Record into the Office within four Days after Notice of the Rule, if in the Country, before the Continuance-day of that Term, or a Non-pros may be signed and entered.

If the Action be laid in London or Middlesex, the Defendant ought not to give a Rule for the Plaintiff to enter his Issue the same Term in which the Issue is joined, unless Notice of Trial hath been given; and in a Country Cause the Plaintiff is no ways bound to enter his Issue the same Term.

No Trial can be had by Proviso in London or Middlesex till Default made by the Plaintiff after the Issue is entered on Record, nor in Country Causes till the Plaintiff hath made Default in trying his Issue the next Assizes after the Issue is entered; and in neither Case till a Rule for a Trial by Proviso be entered.

If both Plaintiff and Defendant happen to carry down the Record at the same Time, the Trial shall be by the Plaintiff's Record, if he enters it with the Marshal; but if he refuses or omits, the Defendant may proceed on his Record.

The Plaintiff may countermand Notice of Trial tho' it be a Trial at Bar, (which are always appointed by the Court) and prevent the Cause being tried at the Day, nor can it be brought to Trial, unless some Day be appointed again by the Court.

Trials at Bar are never allowed in an Issuable Term unless the Crown be concerned in Interest.

Die Sabbati prox'  
post Mens' Pas-  
che Anno 5 An-  
ne Regine.

Easter, 5 Anne,  
1706.

Special Imparance.

**O**rdinatum est qd'  
Special' Li' Lo'  
non allocetur Defend'  
sine licent' hujus Cur'  
prius obtent'.

**I**t is Ordered, That a Special Imparance shall not be allowed the Defendant, without the Leave of this Court first obtained. (a)

Mich. 5 Anne, 1706.

Incipiturs, Rolls, Records.

**I**FOR avoiding many Inconveniencies and Mischiefs which Daily happen to the Queen's Subjects who prosecute Suits in this Court, through the Neglect and Misfeasance of many of the Attornies of this Court, and other Persons who practise as such, in not entering on

Record their several Judgments, Issues, and other Proceedings and Process in this Court, to the great Damage and Loss of their Clients.

It is therefore Ordered by this Court, That from and after the first Day of next Hillary Term, every Judgment in Debt, Case, Covenant, Trespass, Trover, or any other Action, shall be enter'd fairly on the Roll, or an Incipitur thereof, before such Judgment shall be signed by the Secondary, or any Justice of this Court, and the Names of the Plaintiff and Defendant, with the County where the Action is laid, and the Nature of the Action, with the Attorney's Name, shall be entered in a Book to be kept by the Secondary of the Court for that Purpose, for which nothing shall be paid but the ancient and accustomed Fee for entering such Judgment. (b)

And it is further Ordered, That no Record of Nisi prius shall be sealed (c) or passed at the Nisi prius Office by the Custos Brebium of this Court, or any Clerk of that Office, before the Issue in that Cause be fairly (d) entered on Record, or an Incipitur thereof, and such Entry with the Record of Nisi prius be first brought to, and signed by the Secondary of this Court, for which no Fee shall be demanded or paid, but the usual and accustomed Fee due to the Chief Clerk of this Court for Entry of such Issue on Record. (e)

[m]

And

(a) Pleas to the Jurisdiction of the Court, or in Abatement, ought to be pleaded before the Rule for pleading is out, and cannot be pleaded after a common Imparance, or unless the Declaration be delivered after Term, or so late in the Term, that the Defendant is not bound to plead to it that Term; in both which Cases the Defendant may, within the first four Days inclusive of the next Term, plead any Plea in Abatement or to the Jurisdiction of the Court, as of the preceding Term; but if such Plea be not delivered or left in the Office in Time (whether a Rule to plead be given or not) such Plea is not to be received, &c.

Sunday, or any Day on which the Court does not sit, is to be accounted as one of the four Days, unless it happens to be the last Day.

Every Plea of Tender, or where the Defendant alleges he was always Ready to do any particular Act, must be pleaded in like Manner as Pleas in Abatement. If it be a Plea of Tender, the Money must be brought into Court, and the Receipt of the proper Officer be wrote on the Plea before it is filed. See Hil. 5 Ja. I.

(b) East. 17 Ja. I. East. 1657. East. 4 Ja. II.

(c) You pay 7 s. 6 d. for the first eight Sheets, 7 s. for every eight Sheets after, and 6 d. to the Sealer.

(d) The Nisi prius Record is to be Ingrossed on a Press of Parchment, stamped with a double Half-Crown Stamp.

(e) Trin. 1 Ja. II. East. 1657.



And it is further Ordered, That every Attorney shall bring in all his Rolls into the Office fairly ingrossed, in a good full (a) Court Hand, by the Times limited by former (b) Rules; (that is to say) the Rolls of *Trinity*, *Michaelmas* and *Hillary* Terms, before the Effoin-Day of every subsequent Term, and the Rolls of *Easter* Term before the first Day of *Trinity* Term; and that no Attorney at large, or any other Person, shall take any Numbers, or file any Rolls, but the (c) Clerks of the Chief Clerk of this Court only.

J. Holt, } Lit. Powis,  
J. Powel, } H. Gould.

*Die Mercarii prox'  
post tres Septi-  
man' Sti' Mi-  
chaelis Anno 5  
Anne Reginae.*

Mich. 5 Anne,  
1706.

Warrants of Attorney.

II. *O* Rdinatum est (in Prosecution) cujusdam Actus Parliamenti nuper editi & provis. ad compellend' separat' Attorn' hujus Cur' affilare Warrant' sua Attorn' 2d Attorn' pro Defend' tempore comparenc' sue pro tali Defend' dabit Attorn' pro Quer' Warrant' Attorn' pro tali Defend'. Et tempore deliberation' Copie Narration' vel Allocation' inde ex Officio ubi affilatur, solvet quatuor denar' pro dicto Warrant' Attorn'. Quod quidm Warrant' Attorn' præd' Quer' affilabit cum Officiari' ap-punctuati' pro affilatione inde eodem tempore quo affilatur vel affilare debet Warrant' Attorn' pro Querente. Et si talis Attorn' pro Defend' recusabit solvere Attorn' pro Querente dict' quatuor denar' pro Warrant' Attorn' præd' modo & forma supra-dict' tunc tal' Attorn'

2

II. *I*t is Ordered (in Pursuance of an Act of (d) Parliament lately made and provided to compel the several Attornies of this Court to file their Warrants of Attorney) That the Attorney for the Defendant, at the Time of his Appearance for such Defendant, shall give the Plaintiff's Attorney the Warrant of Attorney for such Defendant; and at the Time of the Delivery of the Copy of the Declaration, or taking thereof out of the Office where it is filed, shall pay four Pence for the said Warrant of Attorney, which Warrant of Attorney the said Plaintiff's Attorney shall file with the Officer appointed for filing thereof at the same Time when he files or ought to (e) file the Warrant of Attorney for the Plaintiff. And if such Attorney for the Defendant shall refuse to pay the Plaintiff's Attorney the said four Pence for the said Warrant of Attorney in Man-

*pro Querente super tal' Recusation' signare poterit Judicium versus Defend' in tali Actione per Defalt'.*

ner and Form aforesaid, then such Attorney for the Plaintiff upon such Refusal may sign Judgment against the Defendant in such Action, by Default.

*Die Jovis prox'  
post quinden' Sti'  
Martini Anno  
5 Anne Regi-  
næ.*

Mich. 5 Anne,  
1706.

Pleading.

III. *O* Rdinatum est qd' si aliqua persona sive personæ existen' arrestat' super aliquod Breve de Latitat' sive aliquem al' Process. e Cur' hic emanant' retornabile hic in Cur' ante tres Septimanas Paschæ in Termino Paschæ vel Mens' Michaelis in Termino Sti' Michaelis & Defend' comparabit & imponet Co'e sive Speciale Bail' superinde, & Quer' narraret in aliqua Actione quacunq' & locaret Actionem suam in London' vel Com' Midd' qd' tunc si Narratio deliberat' fu'it Attorn' pro Defend' vel affilat' seu reliç' in Officio ante diem Esson' Mens' Paschæ in Termino Paschæ & ante diem Esson' Crastin' Animar' in Termino Sti' Michaelis, tunc Defend' in tali Actione super Regulas dat' placitabit ad exitum de eodem Termino quo Narratio deliberat' affilat' seu reliç' existit per spatium duorum dierum prox' ante diem Esson' prox' Termini aliter Judicium intrari poterit per Defalt' sed si Narratio non deliberat' affilat' seu reliç' fu'it

III. *I*t is Ordered That if any Person or Persons being arrested upon any Writ of *Latitat*, or any other Process issuing out of this Court returnable here in Court before three Weeks of *Easter* Term, or the Month of *Michaelmas* in the Term of *St. Michael*, and the Defendant shall appear and put in common or special Bail thereupon, and the Plaintiff shall declare in any Action whatsoever, and shall lay his Action in *London*, or in the County of *Middlesex*, that then if the Declaration shall be delivered to the Attorney for the Defendant, or filed, or left in the Office before the Effoin Day of the Month of *Easter* in *Easter* Term, and before the Effoin Day of the Morrow of *All Souls* in the Term of *St. Michael*; then the Defendant in such Action, upon Rules given, shall plead to Issue of the same Term in which the Declaration was delivered, filed, or left by the space of two Days next before the Effoin-Day of the next Term; otherwise Judgment may be entered by Default: But if the Declaration was not delivered, filed or left until after

(a) Now in a common Hand, Stat. 6 Geo. II. c. 27.

Trin. 1 Ja. II.

(c) There is no Distinction now used between Clerks and Attorneys.

(d) Stat. 4 & 5 Ann. cap. 16.

(e) Tho' the Warrant be not filed according to the Stat. it is not Error, for if the Plaintiff file the Warrant at any Time before the Defendant hath pleaded, it is sufficient. Mod. Cases in Law and Equity 77.

(b) See Mich. 9, and Trin. 10 W. III. and the Note there.

*fu'it usq; post præd' se-  
parat' dies Effon' in  
qualibet Termino Pas-  
che & Termino Sti'  
Michaelis tunc Defen-  
dens habebit licentiam  
placitandi usq; prox'  
Terminum secundum an-  
tiquam consuetud' hujus  
Cur'.*

after the said several Effoin-  
Days in each Term of Ea-  
ster and Michaelmas, then  
the Defendant shall have  
leave to plead until the next  
Term according to the an-  
cient Course of this Court. (a)

*Captivem & Detentio-  
nem aliter fiat superse-  
deas pro eodem Defend'.*

Defendant in Custody of such  
Sheriff, before the End of  
the second Term after such  
taking and detaining, other-  
wise a *Supersedeas* may be  
made for such Defendant. (b)

*Die Mercurii prox'  
post Octab' Sanc-  
te Trin' Anno  
sexto Anne Re-  
ginae.*

Trin. 6 Anne,  
1707.

#### Prisoners.

**Q**UOD ubi ali-  
quis Defend'  
existen' prisonar' in  
Custod' Mar' huj' Cur'  
super medium processum  
capt' & detent' fuerit  
in Custod' alicujus Vic'  
huj' Regni Virtute War-  
rant' Justic' hujus Cu-  
riae pro Evafione e Cu-  
stodia Mar' præd' fact'.

Ordinal' est quod  
querens in tali Actione  
narrabit versus eundem  
Def. in Custod' talis  
Vic' ante finem secundi  
Termini post hujusmodi

**T**HAT where any De-  
fendant, being a Pri-  
soner in Custody of the  
Marshal of this Court upon  
Mesne Process, shall be ta-  
ken and detained in Custody  
of any Sheriff of this King-  
dom, by Virtue of a Judge's  
Warrant of this Court, for  
an Escape made from the  
Custody of the Marshal a-  
foresaid.

It is Ordered, That the  
Plaintiff in such Action shall  
Declare against the said De-

*Die Veneris prox'  
post Crastin' A-  
nimar' Anno 8  
Anne Reginae.*

Mich. 8 Anne,  
1709.

**I.** **O**rdinatum est  
quod ubi ali-  
quis Defendens arrestat'  
fuerit per Vic' London  
vel Com' Midd' per  
Process. e Cur' hic e-  
manan' & dabit tali  
Vic' Scriptum obligator'  
pro Comparen' sua ad  
diem Retorn' hujusmodi  
Process. talis Defend'  
habeat Licenc' per qua-  
tuor dies post Retorn'  
ill' ad imponend' bon'  
manuapt' ad sectam  
Quer' in tali process.  
& infra Tempus ill'  
cesset omnis process. super  
script' obligator' Vic'  
Et in Casu Arrestatio-  
nis alicujus Defend' in-  
fra

**I.** **I**t is Ordered, That  
where any Defendant  
shall be arrested by the Sher-  
iffs of London or Middlesex,  
by Process issuing out of this  
Court, and shall give to such  
Sheriff a (d) Bail-Bond for  
their Appearance on the  
Day of the Return of such  
Process, such Defendant  
shall have Leave for (e)  
four Days after that Return  
to put in good Bail at the  
Suit of the Plaintiff in such  
Process, and within that  
Time all (f) Proceedings  
upon the Bail-Bond to the  
Sheriff shall stay. And in  
case of Arrest of any De-  
fen-

(a) See East. 5 Ann. Formerly the Defendant had in all Cases an Imparlance to the Term next after the Return of the Process, except the Proceedings were by Original, or for or against Attorneys or other Privileged Persons, or against Prisoners in Custody of the Marshal; in which Cases, the Defendant was bound to plead without any Imparlance the same Term the Declaration was delivered, (if delivered four Days before the End of the Term) and except the Proceedings were by Habeas Corpus, or the Process was returnable the first Return of Easter or Michaelmas Term, and Declaration delivered according to this Rule. But now the Practice is altered, and the Defendant must plead according to the Rule Trin. 5 & 6 Geo. II. if the Process be returnable the first or second Return of any Term.

If a Bill be filed against an Attorney and a Copy thereof delivered four Days exclusive before the End of the Term, including Sunday as one, the Defendant must plead as of that Term, the Plaintiff having entered a Rule to plead and demanded a Plea; otherwise if a Bill be not filed and a Copy delivered within that Time, the Defendant is intitled to an Imparlance.

Or if an Attorney sues out an Attachment of Privilege, and delivers his Declaration four Days before the End of the Term, the Defendant must plead as of that Term; but if he does not deliver his Declaration before the Effoin-Day of the subsequent Term, the Defendant will have an Imparlance to the next Term following.

An Attorney cannot bring an Action till a Month after a Bill delivered and subscribed with his proper Hand. Stat. 2 Geo. II. cap. 23. 12 Geo. II. cap. 13.

(b) Trin. 2 Geo. I.

(c) Former Rule, Easter, 11 W. III. reg. 2.

(d) Every Bail-Bond ought to be in double the Sum sworn to and indorsed on the Process.

(e) In B. R. the four Days and six Days are reckoned exclusive, in C. B. inclusive of the Day of the Return of the Writ. If either the fourth or sixth Day fall on a Sunday, the Defendant has the Monday following to put in Bail.

(f) The Assignment of the Bail-Bond must be stamped before the Action is brought. No special Bail is required to such Action against Bail, nor is the Sheriff after the Action brought, answerable tho' the Bail are insufficient. See Mich. 6 Geo. II.

If the same Persons who were Bail to the Sheriff become Bail to the Action, the Plaintiff is not at Liberty to except against them, after he hath taken an Assignment of the Bail-Bond. 2.

The Delivery of a Declaration before special Bail is put in, is a Waiver of the Bail, and if before Bail is justified, it is an Acceptance of them; but if delivered de bene esse, then it is only Conditionally that good Bail be put in, or the Bail already put in do justify.

*fra aliquem aliam Com-  
bujus Regni per Proce-  
sum e Cur' hic ut præ-  
fertur emanant talis  
Defend' habeat Licenc'  
per sex dies ad impo-  
nend' bon' mādūcāp'  
post Return' talis pro-  
cessus sine aliqua prose-  
cutione quacūq; super  
script' obligator' Vic'  
interim fūd'.*

Defendant in any other County of this Kingdom, by Process issuing out of this Court, as aforesaid, such Defendant shall have Leave for six Days to put in good Bail, after the Return of such Process, without any Prosecution whatsoever to be made in the mean Time on the Bail-Bond to the Sheriff.

*Die Martis prox'  
post Crastinum  
Animarum An-  
no 8 Annæ Re-  
ginæ.*

The same Term,  
1709.

Bail.

II. **O** *Rdinatum est quod nulla Exceptio ad Speciale Ballium coram aliquo Justic' hujus Curie impositum imposterum facta fuerit post viginti dies post Notic' talis Ballii impositi secundum Consuetud' huj' Curie dat' Et quod Exceptio post tempus illud facta vacua fuerit & nullius Vigoris.*

II. **I**t is Ordered, That no (a) Exception to Special Bail, put in before any Justice of this Court, shall be made for the future after twenty Days Notice given of such Bail being put in, according to the course of this Court; and that Exception after that Time made shall be void, and of no Force. (b)

2

The Court on Application will stay the Proceedings on the Bail-Bond upon putting in good Bail, paying the Costs, receiving a Declaration in the Original Action, pleading to Issue and taking short Notice of Trial, so that the Issue may be tried the same Term.

If the Plaintiff has lost a Trial, the Court will further require, that the Bail consent that Judgment be entered against them on the Bail-Bond for the Plaintiff's Security. But in Case the Plaintiff might have had Judgment against the Defendant in the Original Action, if Bail had been put in in time, the Court will not then stay the Proceedings on the Bail-Bond.

(a) Exception is made in the Bail-Book at the Judges Chambers, and Notice of such Exception ought to be given. Note: After a Declaration is delivered in the Original Action, Bail cannot be excepted against, unless the Declaration be delivered de bene esse, and so marked on the Back. See the foregoing Rule, and Easter, 5 Geo. II.

(b) Mich. 16 Car. II.

(c) Persons in Custody on any Criminal Matter cannot be charged at the Suit of a Subject in any Action without Leave of the Court. Salk. 354.

(d) The Term in which the Writ (whereon the Defendant was Arrested) is returnable to be accounted one of the two Terms, altho' the Writ be returnable on the last Day of the Term, and so likewise the Term wherein the Defendant was committed to the Custody of the Marshal, is to be accounted one, altho' not committed till the last Day of a Vacation.

(e) To discharge a Prisoner on the Plaintiff's not declaring, a Certificate must be had from the Clerk of the Declarations, that no Bill is filed in his Office against the Defendant, and a Certificate of the Causes wherewith he stands charged from the Clerk of the Papers of the King's Bench Prison, if in Custody of the Marshal, or from the Gaoler

## RULES and ORDERS OF THE Court of King's Bench.

*Die Mercurii prox'  
post tres Septi-  
man' Sanctæ  
Trin. Anno 2  
Georgii Regis.*

Trin. 2 Geo. I.  
1716.

**O** *Rdinatum est per Cur' quod si aliquis Defendens commiss' fuerit Custod' Mar' huj' Cur' vel onerat' fuerit in Custod' ejusdem Mar' vel arrestat' vel commiss' fuerit virtute processus huj' Curie Custod' alicuj' Vic' sive al' Officiar' cujuscuq; ad seclam alicuj' Quer' & sic in Custod' remanebit per duos Terminos & Quer' non narrabit verustatem Defend' infra Temp' illud quod talis Defend' post finem secundum Terminum post tale Imprisonamentum exonerabitur extra Prisonam qua sic detentus erit super Affilationem communis Ballii signat' per*

**I**t is Ordered by the Court, That if any Defendant shall be committed to the Custody of the Marshal of this Court, or (c) charged in Custody of the said Marshal, or Arrested, or Committed by Virtue of the Process of this Court to the Custody of any Sheriff, or other Officer whatsoever at the Suit of any Plaintiff, and shall so remain in Custody for two (d) Terms; and the Plaintiff shall not Declare against such Defendant within that Time; that then such Defendant, after the End of the second Term after such Imprisonment, shall be (e) discharged out of the Prison where he shall be so detained on filing Com-

Prisoners.

*Per un' Justic' buj'  
Cur' absq; Notic' Quer'  
vel ejus Attorn' dand'.*

*Et si talis Quer'  
narrabit versus talem  
Defend' Prisonar' in  
Custod' Mar' bujus Cur'  
vel alicuj' Vic' vel al'  
Officiar' ut prefertur  
remanens & non proce-  
det ad Triationem sive  
Judic' infra tres Ter-  
minos prox' post talem  
Narrationem deliberat'  
vel si aliquis Quer' ob-  
tinebit Judic' in Cur'  
hic in aliqua Actione  
versus aliquem Defend'  
Prisonar' & non one-  
rabit præd' Defend' sic  
in Prisona remanens in  
Executione super Judic'  
sic obtinebit infra duos  
Terminos prox' post tale  
Judic' sic habet & ob-  
tinebit tunc talis Defend'  
sic in prisona remanens  
habebit Licent' ad affil-  
land' commune Ballium  
vel ad proseguend' Bre-  
ve de superseadeas e Cur'  
hic secundum Consuetud'  
buj' Curie pro Exo-*

Common Bail, signed by one of the Justices of this Court, without giving Notice to the Plaintiff or his Attorney. (a)

And if such Plaintiff shall Declare against such Defendant, a Prisoner in Custody of the Marshal of this Court, or any Sheriff or other Officer as aforesaid remaining, and shall not proceed to Trial or Judgment within three (b) Terms next after such Declaration delivered, or if any Plaintiff shall obtain Judgment in the Court here in any Action against any Defendant a Prisoner, and shall not charge the said Defendant so in Prison remaining, in Execution upon the Judgment so obtained, within two Terms next after such Judgment so had and obtained; then such Defendant so in Prison remaining shall have Leave to file common Bail, or to sue out a Writ of *Superseadeas* out of the Court here, according to the course of this Court for his

*neratione sua e Custod'  
præd' ubi sic detent' fu-  
erit per un' Justic' buj'  
Cur' concedend' si Cau-  
sa ei non ostensa fuerit  
in contrar' per Quer'  
vel ejus Attorn' super  
Notic' eis vel eorum al-  
teri per Attorn' pro  
Defend' dand' & Sa-  
crament' ejusdem Notic'  
fiend' si idem Quer' non  
comparebit coram Ju-  
dice præd' ad impedi-  
dum affilationem com-  
munis Ballis præd' seu  
confectionem præd' Bre-  
vis de superseadeas.*

Discharge out of Custody aforesaid where he shall be so detained, to be granted by one of the Justices of this Court, if Cause shall not be shewn to the contrary by the Plaintiff or his Attorney, upon (c) Notice to them or either of them given by the Attorney for the Defendant, and Oath of the said Notice to be made, if the said Plaintiff shall not appear before the Judge aforesaid, to hinder filing the Common Bail aforesaid, or making the aforesaid Writ of *Superseadeas*. (d)

Easter, 7 Geo. I. 1721.

*Records of Nisi prius.*

**I**t is Ordered, That all Records of *Nisi prius* in London and Middlesex, be sealed on or before the respective Days appointed (by the Lord Chief Justice) in the Sittings Paper for their Trial. (e)

[n]

*Die*

Gaoler or Keeper of the Prison, if in Custody of a Sheriff or other Officer; which being carried to a Judge he will grant an Order for a *Superseadeas*; Notice is required to be given the Plaintiff and Affidavit made thereof, if the Plaintiff or his Attorney does not attend to oppose or consent to his Discharge.

(a) If the Defendant superseade for want of Proceedings before Judgment, yet the Plaintiff may after Judgment obtained take the Defendant in Execution; but otherwise if the Defendant superseade for want of charging in Execution.

(b) The Term in which the Declaration shall be delivered, or the Term wherein Judgment shall be obtained, to be reckoned one.

(c) In either of these Cases the Notice to be given the Plaintiff is a Judge's Summons to attend and shew Cause why the Defendant should not be discharged for the Plaintiff's not Declaring or not Proceeding.

If a Prisoner be in Custody of a Sheriff or other Officer, he must sue out a Writ of *Superseadeas*, for signing which the Bail-piece signed by one of the Judges is a Warrant to the Officer with whom you leave it, and he delivers it over to the Clerk of the Common Bails to be filed. But if the Prisoner be in the Custody of the Marshal, a Certificate from the Clerk of the Bails, that Common Bail was filed with him by order of a Judge, will be sufficient to the Marshal without a *Superseadeas*.

If a Defendant surrender himself after Judgment in Discharge of his Bail, the Plaintiff must charge him in Execution in two Terms (the Term wherein he surrenders to be accounted one) or he may be discharged on filing Common Bail, as if in Custody for want of Bail upon an Action, unless Proceedings be stayed by Writ of Error or Injunction.

To charge a Defendant in the Custody of the Marshal in Execution, draw up a Rule with the Clerk of the Rules, serve the Marshal with a Copy, and he writes at the Bottom of the Rule his Acknowledgment, then enter the *Committitur* in the Marshal's Book with Mr. Lantrow, and file it with Mr. Hawley.

If a Prisoner in the Fleet charged with a Declaration in the Common Pleas, remove himself by *Habeas Corpus* to the Custody of the Marshal, the Plaintiff must proceed to Judgment in the Common Pleas, and then may carry him back by *Ha' Cor'* ad satisfaciendum to charge him in Execution; and so likewise if a Prisoner in Custody of the Marshal be charged with a Declaration in this Court, and he removes himself to the Fleet, the Plaintiff must proceed to Judgment in this Court, and the Defendant brought back by *Ha' Cor'* to be charged in Execution; the Number of the Judgment Roll must be indorsed on the *Habeas Corpus*.

If a Writ be sued out against Husband and Wife, and the Wife only be arrested and detained in Custody, she shall not be compelled to put in Bail for her Husband, but may file common Bail for herself, and have a *Superseadeas* for her Discharge; but if the Husband only be arrested, he shall put in Bail for his Wife as well as himself.

(d) Former Rules, East. 16 Car. II. East. 5 W. & M. Trin. 9 W. III. Trin. 6 Ann. Stat. for Relief of Prisoners, 2 Geo. II. cap. 22. 3 Geo. II. cap. 27. 8 Geo. II. cap. 24. 10 Geo. II. cap. 26. 11 Geo. II. cap. 9.

(e) Trin. 1 Ja. II. Mich. 5 Ann. reg. 1.

*Die Lune prox'  
post Octab' Pu-  
rificationis beate  
Marie Anno 8  
Georgii Regis.*

Hil. 8 Geo. I.  
1721.

Notice of Inquiry.

**Q**UOD cum mag-  
ne Dilationes  
sepe contingunt Que-  
rentib' in eorum scdis  
in Cur' hic ratione Mo-  
ratione in Lege per At-  
torn' pro Defend' post-  
quam iidem Quer' ob-  
tuler' Exit' per patriam  
triand' super placita  
eorundem Defend' pla-  
citat' & deliberaverunt  
Libros Papir' cum No-  
ticia triationis secundum  
Conf. huj' Cur' eo qd'  
post Judic' per Quer'  
obtenit super talem Mo-  
rationem in Lege non  
remanet Tempus suffici-  
ens in Termino ad dand'  
Notic' Brevis de Inquir'  
de Dampnis exequend'  
infra Terminum quo  
Judic' sic obtent' fuerit  
Ideo ordinatum est in fu-  
turo qd' in omni Casu ubi  
Quer' concludit ad pa-  
triam super placitum  
Defend' & dabit Noti-  
ciam Triationis Exitus  
super librum papir' ut  
præfertur & superinde  
Defend' ad impediend'  
Triationem Exitus mo-  
rabit in Lege super Re-

**W**HEREAS great Delays  
often happen to the  
Plaintiffs in their Suits in  
this Court by reason of De-  
murrers in Law by the De-  
fendant's Attorney, after the  
said Plaintiff hath tendered  
the Issue to be tried by the  
Country upon the Plea of the  
said Defendant pleaded, and  
hath delivered Paper Books  
with Notice of Trial, accord-  
ing to the Course of this  
Court, so that after Judg-  
ment obtained by the Plain-  
tiff upon such Demurrer in  
Law, there is not sufficient  
Time in the Term to give  
Notice of executing a Writ  
of Enquiry of Damages,  
within that Term in which  
the Judgment shall be so ob-  
tained;

Therefore it is Ordered  
for the future, That in eve-  
ry Case where the Plaintiff  
shall conclude to the Coun-  
try upon the Defendant's  
Plea, and shall give Notice  
of Trial of the Issue upon  
the Paper Book as aforesaid,  
and thereupon the Defen-

plicationem vel placi-  
tum Quer' & Quer'  
jungeret in tali mora-  
tione & superinde obti-  
nebit Judic' Attorn' pro  
Defend' ten' fuerit ac-  
cipere Noticiam Brevis  
de Inquir' de Dampnis  
exequend' a tempore  
Notic' triationis super  
Librum Papir' dat' ut  
præfertur.

dant, to hinder the Trial of  
the Issue shall demur in  
Law, upon the Replication  
or Plea of the Plaintiff, and  
the Plaintiff shall join in  
such Demurrer, and there-  
upon shall obtain Judgment,  
the Attorney for the De-  
fendant shall be obliged to  
accept of Notice of execu-  
ting a Writ of Inquiry of  
Damages from the Time of  
Notice of Trial given upon  
the Paper Book, as afore-  
said. (a)

Mich. 11 Geo. I. 1724.

Summons.

**I**T is Ordered, That no Attorney or other  
Person shall be summoned to attend any Ju-  
stice of this Court, nor any Matters be transac-  
ted before such Justice at his Chambers, or else-  
where out of Court, during the Sitting of this  
Court at Westminster; and all Orders and other  
Transactions so to be made by such Justice shall  
be vacated.

(a) Upon the Delivery of any Paper Book wherein an Issue is joined, and Notice of Trial given on the back of the Book, if the same be afterwards waived, and the general Issue given, the Notice which was given for the Trial of the special Issue shall serve for Notice of the general Issue.

Where the Plaintiff, upon any Pleading of the Defendant, tenders an Issue, and the Paper Book is made up and delivered with Notice of Trial, and the Defendant strikes out the Similitur, and returns the Book with a Demurrer, if Judgment be given for the Plaintiff on the Demurrer; it is Ordered by the above Rule, that the same Notice which was given for the Trial of the Issue shall serve for executing the Writ of Inquiry. But then the Plaintiff ought to give Notice of the Hour and Place of Executing the Inquiry.

The Court will allow Costs for not Executing a Writ of Inquiry according to Notice in like Manner as for not going to Trial. Mich. 4. Ann.

# RULES and ORDERS OF THE Court of King's Bench.

Trin. I Geo. II. 1727.

Delivering Declarations and Pleading.

*TO establish the Practice of this Court upon the late Act of (a) Parliament for preventing Frivolous and Vexatious Arrests,*

It is Ordered, That from and after the last Day of this present Term, in all Causes where a Copy of the (b) Process of this Court is served upon any Defendant or Defendants, and an Appearance is entered, or common Bail filed for such Defendant or Defendants, by the Plaintiff's Attorney, pursuant to the said Act, the Plaintiff's Attorney in such Case shall leave a Copy of the Declaration in the Office with the proper Officer appointed for that purpose, and likewise give Notice thereof to the Defendant or Defendants, by delivering an *English* (c) Notice, written in Secretary Hand, to such Defendant or Defendants, or by leaving the same at the last or most usual Place of Abode of such

Defendant or Defendants, in which Notice shall be likewise expressed the Nature of the Action, and at whose Suit prosecuted, and the Time limited by the Rules of this Court, for such Defendant or Defendants to plead to such Action; and that in case such Defendant or Defendants do not plead to such Declaration by such limited Time, so to be expressed in such Notice, Judgment will be entered against such Defendant or Defendants by Default. And from the Time of giving such Notice as aforesaid, such Declaration shall be deemed well delivered to such Defendant or Defendants, and not otherwise.

And in case such Defendant or Defendants (after such Notice given) do not plead by the Time the Rules for pleading are out, the Plaintiff in such Case may sign his Judgment without any other or further calling for a Plea, and thereon give Notice of executing his Writ of Inquiry, either by delivering a Notice in Writing to such Defendant or Defendants; or by leaving the same at the last or most usual Place of Abode of such Defendant or Defendants; which shall be a sufficient Notice to such Defendant or Defendants of the Time of executing such Writ of Inquiry.

And whereas by the Rules of this Court, Defendants have usually been allowed eight Days Time to plead;

It is further Ordered, That from and after next Hillary Term, (d) four Days only shall be allowed such Defendants from the Time of giving any Rules to plead.

R. Raymond, J. Reynolds, E. Probyn.

Die

(a) Stat. 12 Geo. I. cap. 29.

(b) The Day and Year of signing Process is to be set down thereon, Stat. 5 & 6 W. & M. cap. 21. — 9 & 10 W. III. cap. 25. And the Name of the Attorney wrote on every Writ or Process and Writ of Execution, and the Warrants thereon, Stat. 2 Geo. II. cap. 23. but by Stat. 12 Geo. II. cap. 13. the not subscribing the Attorney's Name on the Warrant shall not vitiate, provided the Writ, &c. be regularly subscribed, and Sheriffs are thereby obliged to subscribe the Attorney's Name on Warrants, on Penalty of 5 l.

(c) See Trin. 5 & 6 Geo. II. Mich. 10 Geo. II. reg. 2.

(d) On all special Rules given by the Secondary, as to Reply, Rejoin, Surrejoin, Rebut, plead in Bar, join in Demurrer, enter the Issue or Demurrer on the Part of the Defendant, the Party who is to do the Act is to be served with a Copy of the Rule, and hath four Days Time exclusive after the Service of the Rule to Reply, Rejoin, &c. and if Judgment be signed, or other Proceedings had within that Time, the same will be set aside.

Sunday or any Holiday on which the Court does not sit, or the Office is not open, if it be not the last of those four Days, is to be accounted a Day within those Rules; but see Ca. in Law and Eq. 21.

If a Paper Book be made up and delivered in Term-time, or within four Days exclusive after Term, with a Rule thereon given by the Clerk of the Papers for bringing the same Book to be inrolled, and the Defendant's Attorney doth not, within four Days after the Delivery thereof, bring back the Book and join with the Plaintiff in the special Issue or Demurrer made up, or waive his special Plea, and give the general Issue or Demurrer to any special Issue tendered, and pay for entering the Pleadings on his Part, Judgment may be signed and entered as if no Plea had been pleaded.

But where a Plea is not put in in Time, so that a Paper Book may be made and delivered in Term or within four Days after, yet if it be made up and delivered within eight Days after the Term, the Defendant's Attorney shall be obliged to take it and return it again in four Days after the Delivery, or Judgment may be signed.

If a Plea be pleaded in Term or in Time after the Term, and the Paper Book is not made up and delivered within eight Days exclusive after Term, if it be an Issue to be tried in London or Middlesex, or a Demurrer, the other Party is not bound to deliver back the Book till within the first four Days of the next Term; but if it be an Issue to be tried at the Assizes, the Defendant's Attorney shall deliver back the Book within four Days after the Delivery thereof, and pay for entering his Part, and join in the special Issue, or give the general Issue and take Notice of Trial, or else the Plaintiff's Attorney may sign Judgment by Default, as if the Defendant had not pleaded. But in all Cases, if the Plaintiff's Attorney accept the Book after the limited Time, he cannot sign Judgment.

If

*Die Mercur' prox'  
post tres Septi-  
manas Sancte  
Trin' Anno se-  
cundo Georgii II.  
Regis.*

Trin. 2 Geo. II.  
1728.

Delivering Declarations.

Regula Generalis.

**O**rdinatum quod in omni Causa qua speciale vel commune Ballium afflabitur & Notic' inde dabitur Attorn' pro Quer' Copia Narrationis deliberata fuerit Attorn' pro Defend' qui solvet proinde secundum usum Rationem sed si Attorn' pro Defend' vel ejus Clericus in Absentia dicti Attorn' recusabit solvere pro tali Copia vel si acciderit locum habitationis dicti Attorn' ignot' fore Attorn' pro Quer' tunc licebit relinquere talem Copiam cum Officiis hujus Curie pro Affilatione Narration' appunctuato & Notic' inde indilate detur ipsi Defend' vel ejus Attorn' & talis Narr' habebitur rite deliberat' a tempore talis Notitiæ tantum.

A General Rule.

**I**t is Ordered, That in every Cause in which special or common Bail shall be filed, and Notice thereof given to the Attorney for the Plaintiff, a Copy of the Declaration shall be delivered to the Defendant's Attorney who shall pay for the same according to the usual Rate; but if the Attorney for the Defendant, or his Clerk in his Absence, refuses to pay for such Copy, or if it shall happen, that the Abode of the Defendant's Attorney be unknown to the Plaintiff's Attorney, then it shall be lawful to leave such Copy with the Officer of this Court appointed for affiling Declarations; and (a) Notice thereof shall without delay be given to such Defendant, or his Attorney; and such Declaration shall be held well delivered from the Time of such Notice only.

*Die Mercur' prox'  
post Octavas Pu-  
rificationis bea-  
te Mariæ Anno  
2 Georgii secun-  
di Regis.*

Hil. 2 Geo. II.  
1728.

Regula Generalis.

**O**rdinatum est quod ubi aliquis Defendens arrestatus fuerit virtute alicujus Processus e Cur' hic emanant' in quo Causa Actionis specialiter specificata & expressa fuerit vel Copia talis Processus deliberata fuerit alicui Defend' juxta Formam Statuti in hujusmodi Casu nuper editi & provisum & Quer' superinde narrabit Defend' in tali Casu non habebit Licentiam interloquendi sine Licentia Curie in ea parte prius concedenda sed placitabit adinde infra Tempus per Consuetudinem Curie allocat' Defend' per breve original' processat' & in Defectu inde Judicium intretur versus talem Defend' per Defaltam.

Pleading.

**I**t is Ordered, That where any Defendant shall be arrested by Virtue of any Process issuing out of this Court, in which the Cause of Action shall be specially specified and expressed; or a Copy of such Process shall be delivered to any Defendant, according to the Form of the Statute in such Case lately made and provided; and the Plaintiff thereupon shall declare; the Defendant in such Case shall not have Liberty of Imparling, without Leave of the Court, in that Behalf first to be granted; but shall plead thereunto, within the Time allowed by the court of the Court to Defendants sued by Original Writ; and for want thereof, Judgment may be entered against such Defendant by Default. (b)

The same Term, 1728.

Notice fixed up in the King's Bench Office.

Acetiam.

**I**I. ALL Clerks and Attornies, that intend to proceed according to the above Rule, are to take Notice, that in suing out such Writs they do not insert in the Acetiam the whole Declaration at length, but only describe the Cause of Action shortly according to the Specimen hereunder set forth, varying the same as the Nature of the Action shall require.

4

Gooda

If the Paper Book be of an Issue in Fact, the four Days for keeping the Books are accounted exclusive; if of a Demurrer or Issue in Law, the four Days are inclusive.

If the Issue joined be not an Issue in Fact, but an Issue in Law, as a Demurrer, then as soon as the Paper Book is returned, enter the Proceedings on Record, which being brought into Court, you move by Counsel for a Concilium, and then enter the Cause with the Clerk of the Papers, and deliver the Paper Books to the Judges as directed by the Rule, East. 2 Ja. II.

In all special Pleadings where the Plaintiff takes Issue upon the Defendant's Pleading, or traverses the same, or Demurreth, so as the Defendant is not let in to alledge any new Matter, there the Plaintiff may make up the Paper Book without giving a Rule with the Secondary to rejoin. See Trin. 5 & 6 Geo. II. Mich. 10 Geo. II.

(a) Trin. 1 Geo. II. Trin. 6 Geo. II.

(b) This Rule is now enlarged to Process in common Form; see Trin. 5 & 6 Geo. II. Mich. 10 Geo. II. and the Stat. 5 Geo. II. cap. 27. by which it is Enacted that no special Writ nor Process specially expressing the Cause of Action shall issue, unless the Cause of Action amount to 10 l.

## Goods sold.

Actiam Bill ipius  
Quer' v' prefat' D.  
pro L. l. pro diversis  
Bon' Mercimon' &  
Merchandiz' eidem D.  
per prefat' Q. vendit  
& deliberat' secundum  
Coni', &c.

Of a Plea of Trespas;  
And also to a Bill of the said  
Q. against the aforesaid D.  
for fifty Pounds, for divers  
Goods, Wares and Merchan-  
dizes sold and delivered to the  
said D. by the aforesaid Q.  
according to the Custom,  
&c.

## And Money laid out.

Tam pro divers' Bon'  
Mercimon' & Mer-  
chandiz' vendit' & de-  
liberat' quam pro di-  
vers' Denar' sum' per  
eund' Q. pro eodem D.  
& ad usu' ipius dero-  
gat' & extrapoi'.

for 50 l. as well for  
divers Goods, Wares and  
Merchandizes, sold and de-  
livered, as for divers Sums  
of Money to the said Q. for  
the said D. and for his Use  
and at his Request, laid out  
and expended.

## Money lent and received.

Tam pro divers' De-  
nar' sum' eidem D. per  
prefat' Q. mutuo dat'  
& accommodat' quam  
pro divers' Denar' sum'  
per eundem D. pro co-  
dem Q. & ad usu' ipius  
Q. b'it' & recept'.

as well for divers  
Sums of Money to the said  
D. by the aforesaid Q. lent  
and accommodated, as for  
divers Sums of Money, by  
the said D. for the said Q.  
and to the Use of the said Q.  
had and received.

## Debt.

De p'ito quod red-  
dat ei Cl. quas ei de-  
bet & injuste detinet.

of a Plea that he  
render to him Cl. which to  
him he owes, and from him  
unjustly detains.

## Covenant.

De p'ito quod teneat  
ei Convenc'on' inter  
p'fat' Q. & predict' D.  
fact' juxta forma' &  
effect' cujusdam Indem-  
tur' inter eos confect'.

of a Plea that he  
keep to him the Covenant  
between the aforementioned  
Q. and the aforesaid D.  
made according to the Form  
and Effect of a certain In-  
denture between them made  
and executed.

## Assault.

De eo quod predict'  
D. Vi & Armis in  
ip'm Q. insul' sic &  
ip'm verberavit vul-  
neravit & Maletratta-  
vit ad dampnum ipius  
Q. xl.

for that, that the  
said D. with Force and Arms  
upon the said Q. made an  
Assault, and him beat,  
wounded and ill treated,  
to the Damage of the said  
Q. 10 l.

Upon a Note.  
Promisit solvere — be promised to pay  
prefat' Q. vel ordin' to the said Q. or Order the  
sum' Cl. super demand. Sum of 100 l. upon De-  
mand.

## The same Term, 1728.

Notice fixed up in the King's Bench Office.

## Signing Judgment.

III. **P**Racticers are to take Notice, That for the  
future no Distinction, as to the Time of  
signing Judgments, will be made betwixt Town  
and Country Causes; but that in all Cases, the  
Plaintiff is at Liberty to sign (a) his Judgment  
the Day after the Rules for pleading are out;  
Declaration having been (b) regularly delivered  
and filed, and Defendant, or his Agent, being  
called upon for a Plea, according to the Rules  
and Course of the Court. (c)

Die Lunæ prox'  
post Crast' Ascen'  
Dom' Anno 2  
Georgii secundi  
Regis.

Easter, 2 Geo. II.  
1729.

**O**Rdinatum est qd'  
in omnibus Cau-  
sis per breve Original'  
prosecut' ubi Speciale  
Ballium imponatur si  
Quer' calumpniari vel-  
let tale Ballium Ca-  
lumpniatio inde intrabi-  
tur in libro Filizar'  
& Notic' inde detur  
indilate Attorn' pro  
Defend' prout requiri-  
tur in Causis per Bil-  
lam prolatis.

**I**T is Ordered, That  
in all Causes prosecuted  
by Original Writ, where  
Special Bail may be put in,  
if the Plaintiff will except  
against such Bail, the Ex-  
ception thereto shall be en-  
tered in the Filazer's Book,  
and Notice thereof without  
Delay given to the Defen-  
dant's Attorney, as is requi-  
red in Causes brought by  
Bill. (a)

[o] . Die

(a) Altho' a Judgment be strictly regular, yet if the Plaintiff hath not lost a Trial, the Court will in many Cases (upon Payment of Costs, Pleading to Issue and Accepting Notice of Trial within the Term,) set aside the Judgment, that the Merits may be tried.

(b) If there be any Irregularity in the Process or Proceedings before or after Judgment, it becometh the Defendant's Attorney to apply to the Court as soon as the Irregularity happens, for in many Instances where he hath lain by, and let the Plaintiff proceed and be at great Expence, the Court hath refused to assist the Defendant.

(c) An Incipitur must be entered on the Roll before Judgment is signed. Mich. 5 Ann. see Trin. 5 & 6 Geo. II.

(a) If an Action by Original be sued out in one County, and the Declaration laid in another, tho' it be good against the Defendant, yet the Bail are discharged, and not liab' to a Scire Facias. 3 Lev. 235, 245. and see Mich. 8 Ann. and the Note there. Easter, 5 Geo. II.



*Die Veneris prox.  
post quinden.  
Sti Martini An-  
no tertio Georgii  
secundi Regis.*

Mich. 3 Geo. II.  
1729.

Marshal and Prisoners.

Regula Generalis.

**O**rdinatum est per Curiam quod in futuro separatis Ordinibus seu Regule his inferius scriptis et stabilis secundum directionem cuiusdam Actus Parliamenti in Anno Regni Domini Georgii secundi nunc Regis Magnae Britan, &c. secundo facti et editi intitulat, An Act for the Relief of Debtors with respect to the Imprisonment of their Persons, bene stricte et fideliter observat et conservat fuerint tam per Mar' Marale' hujus Curiae et omnes Officiares et servos suos quam per omnes Prisonar' qui modo sunt vel in futuro de tempore in tempus fuerint commissi Custod' praefat' Mar'.

Et ulterius Ordinatum est quod haec Regula cum separatis Ordinibus seu Regulis praedictis hic inferius scriptis affixis erit in maxime publico loco infra Prisonam hujus Curiae communiter vocat' The King's Bench Prison pro usu beneficio et inspectione Prisonar' infra Prisonam praedictam.

Per Curiam.

By the Court.

**RULES and ORDERS for the better Government of the King's Bench Prison, made and signed the 25th of Nov. 1729.**

*Rules relating to the Marshal.*

1. That the Marshal of the Marshalsea of this Court do cause a Pair of Stocks to be kept up in the Prison (as has been anciently practised, for the Punishment of such Prisoners as shall blaspheme the Name of God, be guilty of Swearing, or behave themselves in a disorderly Manner.

2. That the said Marshal be and is hereby strictly enjoined not to make use of any illegal Means of Confinement of any Prisoner in his Custody, upon any Pretence whatsoever; not to confine any Prisoner in the Hole or Room commonly called the Strong Room, or any other unusual Place of Restraint; nor make use of any other extraordinary Means or Methods; for the Confinement of any Prisoner, unless such Prisoner shall have been found actually attempting or endeavouring to break the Prison, with an Intent to escape out of the Custody of the said Marshal. And every Prisoner so confined shall have Liberty to appeal to this Court in Term-Time, or to the Lord Chief Justice, or to any other Judge of the said Court, in Time of Vacation, for Redress.

3. That the said Marshal do not presume to sue or procure to be sued out, any Writ of Habeas Corpus, to remove any Prisoner from the Prison of the King's Bench to the Prison of the Fleet.

4. That the said Marshal do not presume to turn any Prisoner back from the Common Side to the Master's Side, without reasonable Cause, giving such Prisoner three Days Notice of such his Intention to remove him, during which Time the said Prisoner shall have Liberty to appeal to any Judge of this Court, against such intended Removal, in order to prevent the same; pending which Appeal, the said Prisoner shall be allowed his daily Subsistence as before; and in the mean Time, his Share of all Dividends, and other Advantages shall be reserved till such Appeal shall be determined.

5. That in case any Prisoner die within the said Prison, that the said Marshal shall forthwith give Notice to the Coroner, in order that he may inquire, according to Law, how such Prisoner came by his Death.

6. That the said Marshal do take effectual Care that no Garnish, or other Exaction be extorted from any Prisoner or Prisoners under his Custody; and do also take proper Care that no Prisoner or Prisoners be deprived of his or their Share, Dues and Dividends, on any Pretence whatsoever.

7. That the said Marshal do take effectual Care that all and every Prisoner and Prisoners detained in the King's Bench Prison be permitted and suffered, at his, her and their Will and Pleasure, to send for and have any Beer, Ale, Victuals, or other necessary Food, from what Place they please; and also to have and use such Bedding, Linen, and other Things as he, she, or they shall think fit, without purloining or detaining the same, or any Part thereof, or enforcing or requiring him, her, or them to pay for the having or using thereof, or putting any manner of Restraint or Difficulty upon him, her, or them in using thereof, or relating thereto, pursuant to the several Statutes in that Case made and provided.

8. That

8. That the said Marshal do cause a Table of Fees, as the same shall be settled and confirmed; in pursuance of an Act of Parliament made in the Second Year of his present Majesty's Reign, intituled, *An Act for Relief of Debtors with respect to the Imprisonment of their Persons*: And also a Table of these Rules, together with a List or Table of all Gifts, Legacies and Bequests, for the Benefit of the Prisoners in the said Prison, fairly written in a plain and legible Hand, to be hung up in some open and publick Room or Place in the said Prison, there to remain and be resorted to by every Prisoner, as Occasion shall require, without Fee or Reward, pursuant to the Directions of the said Act.

9. That the said Marshal do use his utmost Endeavour, by all fair and legal Methods, to prevent Escapes; and that he, and all Officers under him, do treat the several Prisoners under his Care with the utmost Tenderness and Humanity, as far as can be consistent with the safe Custody of such Prisoners. And that neither the said Marshal, nor any Officer or Servant employed by him, do demand, take or receive, directly or indirectly, of any Prisoner or Prisoners for Debt, any other or greater Fee or Fees whatsoever for his, her, or their Commitment, Chamber-Rent, Release or Discharge, than what shall be mentioned and allowed in such List or (a) Table of Fees, so to be hung up as aforesaid.

*Rules relating to the Officers and Servants of the Marshal.*

10. That the Turnkeys of the said Prison do diligently attend at the Gate or Door of the said Prison, as the Duty of their Office requires, and do admit all such Persons to have Access to any of the Prisoners as by Law are intitled thereto.

11. That no Cellar-man, Turnkey or other Officer or Servant of the Marshal whatsoever, shall have or pretend to have any Share or Part in the Charities belonging to the Prisoners, or bear any Office in the said Prison, which may intitle him to any Power in the Disposition or Receipt of the said Charities.

*Rules relating to Prisoners in General.*

12. That the Chapel be continued in the Prison aforesaid, and kept in good repair; and that the Chaplain do constantly attend and perform Divine Service, and administer the Sacraments therein at the usual and proper Times, according to the Rites and Ceremonies of the Church of England.

13. That no Prisoner wrong or abuse another, upon Pain of being punished, by setting him in the Stocks for such Time, as the Marshal of this Court, with the Consent of the Steward and Assistants, or any two of them, shall think proper.

14. That the Room, commonly called the Dining-Room, be reserved and kept in good Repair, for the Use and Benefit of the Prisoners, for the Exercise of Devotion, or for Conversation. And that a Fire be kept therein as often

as the Rigour of the Season shall require. And that the two Rooms under the Dining-Room be reserved for the Use of such Prisoners, as shall be afflicted with any Disease or other Infirmary that may require such an Accommodation.

*Rules relating to Prisoners on the Common Side.*

15. That every Prisoner, who shall make Oath before one of the Judges of this Court, or a Commissioner empowered by this Court, or one of the Justices of the Peace for the County of Surry, That he or she cannot command five Pounds, and cannot subsist without the Assistance of the Charities belonging to the common Side, shall immediately be admitted to the said common Side, and be capable of being elected into all Offices, and intitled to all Shares, Dividends, and Profits belonging to the same.

16. That no Person committed for any criminal Matter shall have any Vote or Suffrage in the electing a Steward, or other Officer of the common Side, nor shall receive any Share of the Charities belonging to the said Prison, other than his Share of such Profits and Advantages as shall arise from the Baskets.

17. That every Prisoner shall be admitted to lodge in a Cabin within the respective Ward to which he or she shall belong, without Fee or Reward.

18. That every Prisoner shall be capable of being chosen in his Turn an Assistant, and be intitled to such Allowances, and other Advantages, which, by the Usage of the said Prison, such Assistants have heretofore usually received and enjoyed.

*Rules relating to the Revenue.*

19. That the Seal belonging to the common Side of the said Prison be kept by the Master of the King's Bench Office, (as of late it hath been:) And that the said Seal be not affixed to any Receipt, or other Instrument, till the same be approved and signed by the Marshal, with the Consent of the Prisoners of the said common Side, signified under the Hand of their Steward and Assistants.

20. That if any Prisoner on the common Side of the said Prison be charged with one Action only, and such Action be supersedable, that the same be superseded with the Money belonging to the Prisoners of the said common Side, by their Consent, signified under the Hands of their Steward and Assistants, and signed by the Marshal; but in case any such Prisoner be charged with more than one Action, such Actions shall not be superseded with the Money belonging to the said Prisoners, unless an Order for that Purpose be obtained upon Application to this Court in Term-Time, or to the Lord Chief Justice, or one other of the Judges of this Court in Vacation. And that no Clerk to any of the Judges of this Court shall demand or take any Fee or Reward, on account of superseding any such Action or Actions with the said Prisoners Money,

(a) See the Table of Fees 17 Dec. 1730, 4 Geo. II.

ney, or for any Matter or Thing relating thereunto.

21. That particular Care be taken of all Prisoners of the common Side, who at any Time shall happen to be sick; and that all proper Necessaries shall be provided for them, by the Steward and Assistants; and that they be reimbursed out of the first County-Money.

22. That whatsoever Debts are reasonably contracted by the Steward and Assistants, with the Concurrence of the Marshal, and Master of the King's Bench Office, for the necessary Support of the poor Prisoners; the same shall be entered by the Steward and Assistants for the Time being, in their House-Books, and be paid out of the next Dividend.

23. That no Money shall be allowed to the Steward and Assistants, on Pretence of their sitting on House Business, or adjusting Differences between Prisoner and Prisoner.

24. That any Prisoner that comes into the said Prison, after the first Day of *Easter* Term, shall have but one Quarter of *Midsummer* Dividend.

25. That all the Money brought to the Prison by the Basketmen, and their Boxes, as also such Money as is brought for the Prisoners Use and Relief by the Boxes, which come in at *Christmas*, *Easter* and *Whitsuntide*, be immediately divided to each Prisoner, in due Shares and Proportions, making the Basketmen such reasonable Satisfaction for their Trouble, as hath been heretofore usually allowed.

26. That in case the said Marshal, in Aid of the said Steward and Assistants, shall advance any Money for superseding any Action or Actions against any Prisoner or Prisoners, as is herein before directed, the said Marshal shall stand in the Place of the said Steward and Assistants, and be accordingly reimbursed out of the next County Money.

*Rules relating to the Officers on the Common Side.*

27. That the Prisoners of the common Side have full Power to make a free and open Election of a Steward every Year; and that no Prisoner who hath the Liberty of the Rules, or Liberty to go out of the Walls of the said Prison, shall have any Vote in the Election of such Steward, or of any other Officer of the common Side of the said Prison. And that such Steward so elected, shall continue in the said Office for the Space of one Year, unless removed upon Application made to the said Court in Term-Time, or in Time of Vacation to one of the Judges thereof.

28. That the Steward of the common Side of the King's Bench Prison do keep a Book or Register, wherein shall be entered a Copy of the Table of Fees herein before directed to be hung up in the said Prison, together with a Copy of these Rules and Orders: And also a List of the several Charities belonging to the said Prison, for the Use of the said Prisoners. And that every Prisoner have Liberty at all conveni-

ent Times to inspect the said Book, and also the Steward's Accounts.

29. That if any Prisoner be wronged or abused by the Steward and Assistants, or any of them, of his or her Rights and Dues, that he or she complaining to the Court in Term-Time, or in Time of Vacation to the Lord Chief Justice, or to any of the Judges of the Court, or to the Marshal of the said Court, shall (provided they prove the Cause of their Complaints to be true) have a reasonable Allowance made them for their Costs and Charges upon the said Complaints, to be paid out of the next Dividends belonging to the Steward and Assistants, or such of them who shall appear to have wronged such Person complaining; or if the Complaint prove groundless, that the Person complaining do in like Manner make Satisfaction for such groundless Complaint, out of his Share of the next Dividend.

30. That if any of the Assistants, or the Steward, shall mispend or waste, or by any Ways or Means lavishly consume the House-Money, that the next Assistants, or any succeeding them, may call the former to Account for the same; and upon plain Proof of the aforesaid Mispend Money, cause all the Dividend or Dividends, as well at the Grate as otherwise, to be taken, stopt, and kept for Reparation of the Injury done to the Prisoners in general, and to be put into the House-Box until equally divided to each Prisoner in their due Shares and Proportions.

31. That the Steward and Assistants do cause these Orders to be read every third *Monday* at the first Basket, being the usual Day for choosing the Officers and settling the House-Accounts.

32. That the Marshal of this Court, and all his Officers and Servants, and all Prisoners within the said Prison, do strictly and punctually observe and keep the several Rules, Orders and Directions herein before-mentioned, under Pain of incurring the utmost Punishment that by Law can be justly inflicted upon them respectively.

33. Lastly, It is hereby strictly ordered and enjoined, that no Clerk, Officer, or Servant whatsoever, belonging to any Judge of this Court, shall directly or indirectly demand, receive, or take any Gratuity, Fee or Reward whatsoever, for or by Reason of any Petition, Complaint, or Application that shall be made to any Judge of this Court, by any Prisoner or Prisoners of the said Prison, pursuant to or founded upon any of the Rules and Orders herein before-mentioned.

R. Raymond,  
Ja. Reynolds,  
E. Probyn.

Dec. 17, 1730. 4 Geo. II.

*Part of the King's Bench Prison.*

*Surry, &c.* **A** TABLE of FEES to be taken by the Marshal of the King's Bench Prison in the County of *Surry*, for any Prisoner or Prisoners Commitment, or coming into Gaol, or Chamber Rent there, or Discharge from thence in any Civil Action, SETTLED and ESTABLISHED the 17th. Day of *December* in the fourth Year of the Reign of his Majesty King *George the Second*, Anno Dom. 1730. Pursuant to a late Act for the Relief of Debtors, with respect to the Imprisonment of their Persons, viz.

I. To the Marshal for every Prisoner committed on any Civil Action, 4 s. 8 d.

II. To the Turnkey on the Master's Side, 1 s. 6 d.

III. To the Marshal on the Discharge of every such Prisoner, 7 s. 4 d.

IV. To the Deputy Marshal upon the Discharge of one or more Actions, Executions or other Charge and no further Fee, tho' there be never so many Actions, 4 s.

V. To the Clerk of the Papers for the first Action upon the Discharge, 3 s.

VI. And to the Clerk of the Papers for every Action, Execution or other Charge to be paid on the Discharge, 4 d.

VII. To the Deputy Marshal upon the Commitment of a Prisoner in Court or at a Judge's Chamber in any Civil Action, if carried to the King's Bench Prison, 1 s.

VIII. To the Clerk of the Papers for the same, 1 s.

IX. To the said Deputy Marshal for a Surrender in Discharge of Bail, be there never so many Actions, 1 s.

X. To the Clerk of the Papers for each Action upon such Surrender, 6 d.

XI. To each of the four Tipstiffs 2 s. 6 d. for each Prisoner Committed by the Court and carried to the King's Bench Prison, in the whole, 10 s.

XII. To the Tipstiff that carries any Prisoner committed at a Judge's Chamber to the said Prison, 6 s.

XIII. To the Marshal for the Use of Chamber, Bed, Bedding and Sheets for each Prisoner, if provided by the Gaoler at the Prisoner's Request, for the first Night in the Common Side of the said Prison, 6 d.

XIV. For the like Use every Night the Prisoner remains in Custody after the first, 1 d.

XV. And if Two lie in a Bed, One Penny each, 2 d.

XVI. For the like Use, of every Prisoner that goes on the Master's Side, the first Night, 6 d.

XVII. For the like, every Night after the first, 3 d.

XVIII. And if Two lie in a Bed, Two Pence each, 4 d.

No other Fee for the Use of Chamber, Bed, Bedding or Sheets, or upon the Commitment or Discharge of any Prisoner on any Civil Action.

*Ar. Onslow,  
Edw. Barker,  
N. Hardinge.*

*R. Raymond,  
R. Eyre.*

Easter, 5 Geo. II. 1732.

*Bail.*

I. **I**t is Ordered, That in every Action in this Court, where special Bail is put in, and an (a) Exception entered against the said Bail, and Notice of such Exception is given in Writing to the Defendant's Attorney, the Defendant shall procure his said Bail to justify if the Notice be given in Term-Time, (b) in four Days after such Notice, or shall add other Bail, who shall justify within the said four Days; but if such (c) Exception be entered in Vacation Time, and Notice thereof be given in like Manner, the Bail put in, or other additional Bail, shall (d) justify upon the first Day of the subsequent Term.

By the Court.

[p]

The

(a) Bail cannot be excepted against after the Plaintiff has Declared, unless the Declaration was delivered de bene esse. The Delivery of a Declaration before Bail is put in is a Waiver of Bail.

If the same Persons who were Bail to the Sheriff become Bail to the Action, the Plaintiff is not at Liberty to except against them after he hath taken an Assignment of the Bail-Bond.

(b) The four Days are reckoned exclusive.

(c) In what Time Exception must be entered. See Mich. 8 Ann. reg. 2. and the Note. East. 2 Geo. II. Mich. 16 Car. II. — 8 W. & M. 1696.

(d) If the Defendant does not attend in Court, the Bail must swear they are worth double the Sum indorsed on the Writ. Bail cannot be justified before a Judge at his Chambers, unless by Consent, but must be justified in Court upon Notice given thereof, and Affidavit of such Notice.

But Bail taken before a Commissioner may be justified without their Personal Attendance in Court, by Affidavit of their Ability and their being House-keepers. See — 8 W. III. 1696. reg. 3.

If

If a Defendant be Arrested by Process directed to the Sheriff of one County and Bail be put in thereon, and afterwards the Plaintiff lays his Action in another County, the Bail are not discharged, if the Action be by Bill; tho' it be otherwise, if by Original. See East. 2 Geo. II.

If an Action wherein special Bail is required, be brought against Husband and Wife, and the Husband only is arrested, he shall put in special Bail for his Wife as well as himself.

Every Bail taken on or before the Continuance Day is a Bail, and to be filed of the preceding Term, and every Bail taken after the Continuance Day is a Bail, and to be filed of the subsequent Term; but where new Bail is added to other Bail, taken on or before the Continuance Day, in such Case the new Bail shall be taken and filed as of that Term in which the first Bail was put in. See East. 11 W. III. reg. 2.

In an Action of Covenant, the Defendant is not bound to put in special Bail, unless the Plaintiff has obtained a Rule of Court, or an Order of a Judge for that Purpose, or unless the Covenant be for Payment of Money. See Mich. 1654. sect. 9.

In an Action brought upon a Judgment, if the Debt or Damages recovered without the Costs amount to 10l. or upwards, the Defendant may be compelled to put in special Bail, otherwise he need not put in Bail.

One that is Bail cannot be a Witness for the Defendant upon a Trial, but the Court on Motion will discharge such Bail, on putting in good Bail in his Stead.

The same Term,  
1732.

Bail.

II. **I**t is Ordered, That where the Plaintiff declares for, or recovers a greater Sum than is expressed in the Process on which he declares, the Bail shall not be discharged, but be liable for so much as is sworn to and indorsed on the said Process, or for any lesser Sum, which the Plaintiff in such Action shall recover; any Rule of this Court to the contrary notwithstanding. (a)

By the Court.

Easter, 5 Geo. II. 1732.

Scire facias. (b)

III. **I**t is Ordered that from and after the last Day of this Term, every Writ of Scire facias, of which Notice shall be given to the Defendant or Defendants Named in such Writ, shall be delivered to, or left in the Office of the Sheriff to whom directed, four Days before the Return of such Writ, exclusive of the Day on which such Writ is returnable.

And that every first Writ of Scire facias, on which a Nihil shall be returned, shall be delivered to, or left in the Office of the Sheriff, some Time before the Return of such Writ; and that every Writ of Alias Scire facias shall be delivered to, or left in the Office of the Sheriff, four Days exclusive before the Return of such Writ; and every Sheriff shall Write or Indorse on every such Writ, the Day of the Month in which the same is delivered to him or left in his Office. (c)

(a) Formerly if the Plaintiff declared for more than in the Process, the Bail were discharged. Trin. 22 Car. II. But by this Rule, no Person being Bail in Court or before a Judge shall, upon a Recovery against the Defendant, be answerable for any greater Sum or Sums than are sworn to, or indorsed on the Writ or Process, on which the Defendant was Arrested (altho' one Part of the Condition of the Recognizance is to pay the whole Condemnation Money, if the Defendant does not) and if a greater Sum be recovered, he shall not be discharged, but shall be liable for such Sum or Sums as shall be sworn Due or Indorsed, or any lesser Sum that shall be recovered against the Defendant in such Action wherein he became Bail, together with Costs of Suit.

(b) See Trin. 8 W. III.

(c) No Scire facias lies against the Bail, (except in Error) until a Non est inventus be returned upon a Capias ad satisfaciendum against the Principal, and the Writ be filed; for the Bail are not bound to render the Principal till they know what Execution the Plaintiff will chuse, for he might have sued out a Fi' fa' or Elegit. Lut. 1273.

There ought to be eight Days between the Teste and Return of the Ca' Sa' against the Principal, and in Order to charge the Bail it must lie four Days exclusive in the Sheriff's Office.

If the Action be brought by Original, the want of fifteen Days between the Teste and Return of a Ca' Sa' against the Principal in Order to charge the Bail, is not helped, by the Stat. 13 Car. II. cap. 2. sect. 2.

If the Defendant dies after a Ca' Sa' sued out, and before the Return of it, the Bail are discharged, but must plead it, 1 Jones 136. and where the Principal has died after a Ca' Sa' returned, and before it was filed, the Court on Motion have stayed the filing of it, in Favour of the Bail.

Upon a Non est inventus returned upon the Ca' Sa', the Recognizance in Striānesi is forfeited; yet if the Defendant render himself, or be surrendered by his Bail, at any Time before the Return of the second Scire facias, or of the first where a Scire f. ci is returned, or on the very Day of the Return sedente Curia, the Court ex Gratia will stay the Proceedings.

If there be no Ca' Sa' sued out, returned and filed, the Bail may plead it, and be discharged; but the Court will not quash the Scire facias on Motion.

If Judgment be given with Stay of Execution till a future Day, the Plaintiff may sue out a Ca' Sa' before the Day, in Order to make out a Testatum Ca' Sa' against the Defendant, but not to warrant a Scire facias against the Bail.

Before

Before a Scire facias is made out against the Bail, the Declaration must be entered upon the Rolls at Westminster of the same Term the Declaration was of, with an *Adhuc de Termino*, and after the Declaration the Defendant's Appearance and the Recognizance of the Bail are to be entered.

If a Recognizance in B. R. be entered of Record, a Scire facias may be brought in Middlesex, but in C. B. the Scire facias may be laid in the County where the Caption was, or in Middlesex, where it is filed. Salk. 600, 659, 564. Lutw. 1287.

In case of a Recognizance entered into by Bail on a Writ of Error, if it be entered to be taken at a Judge's Chambers in Serjeants Inn, the Scire facias may be sued out in London. See Mod. Ca. in Law and Eq. 290.

If the Action and Condition of the Recognizance be set forth in the Scire facias, and it appears to be by Bill, the Scire facias must be returnable on a Day certain; otherwise it may be made returnable on a general Return, *Ubicumque*, &c. 2 Lilly 499.

Every Scire facias by Original ought to have fifteen Days inclusive between the Teste and Return, and are made out by the Filaxar of the County.

If the Proceedings are by Bill, fifteen Days inclusive between the Teste of the first and Return of the Alias scire facias are sufficient, and each Scire facias should have seven Days between the Teste and Return; but if one Scire facias only issue, and a Scire feci be returned, the Time between the Teste and Return is not settled.

Nor is the Time settled for warning the Defendant before the Return of the Writ; but its said if he be summon'd the Day before, or even on the Day of the Return of the Writ, it is sufficient.

The first Scire facias against Bail ought to bear Teste the Day of the Return of the Ca' Sa', and the second Scire facias the Day of the Return of the first, and delivered or left in the Sheriff's Office as directed by the above Rule; and see the Note Trin. 8 W. III.

At the Return of the second Scire facias, or of the first if a Scire feci be returned, a Rule must be given for the Defendant or Bail, as the Case is, to appear, and then the Scire facias awarded on the Roll.

Where two Scire facias's issue returnable in different Terms, the first must be entered of the Term wherein it is returnable, and an Award of the second is sufficient without setting it forth at large. If the Bail appear, a Declaration must be delivered on double penny Stamp, a Rule given to plead and Plea demanded as in other Cases.

No Judgment given either for Plaintiff or Defendant upon a Writ of Nisi prius or Inquiry, can be entered until the Expiration of four Days exclusive of the Entry of a Rule for Judgment, during which four Days the Party against whom the Judgment is given, may first move for a new Trial, and if it be denied, may then move in Arrest of Judgment, but cannot move for a new Trial after he hath moved in Arrest of Judgment, and failed.

Sunday or any other Day on which the Court doth not sit is not reckoned one of the four Days, unless the Rule be entered on the last Day of the Term or within four Days after the Term, (during which four Days it is the Practice to enter these Rules as of the last Day of the Term) and at the Expiration of four Days exclusive after entering such Rule, Judgment may be entered.

This Rule ought not to be entered before the Day in Bank, and is not necessary if the Plaintiff be nonsuited; for in that Case Judgment may be entered immediately after the Day in Bank.

After the Rule for Judgment is out, the Record is to be stamped with a double Half-Crown Stamp, *Costs de Intermento* taxed by the Secondary, the Judgment then entered of Record, and such Execution as is proper sued out.

But if either of the Parties die, Execution cannot be taken out upon the Judgment till a Scire fa' sued out, and Judgment thereupon obtained. Stat. 8 & 9 W. III. cap. 10.

If no Execution be sued out within a Year, the Judgment must be revived by Scire facias directed into the County where the Original Action was brought.

But if a Fi Fa', Ca' Sa', or Elegit be taken out within the Year, and returned and awarded on the Roll, the same may be continued from Term to Term, to the Time of the Execution thereof alibi after the Year, and be as assual as if Judgment had been revived by Scire facias.

If the Defendant brings a Writ of Error, and delays the Plaintiff for a Year, and then is nonsuited, Execution may be taken out without a Scire facias.

And see Salk. 322, 598. In Case of an Injunction, or the Judgment be of many Years standing:

## Trin. 5 & 6 Geo. II. 1732.

### A General Rule.

#### Time of Pleading.

**I**T is Ordered, That upon all Process to be sued out of this Court, returnable the first or second Return of any Term, if the Plaintiff declares in London or Middlesex, and the Defendant lives within twenty Miles of London, the Declaration shall be delivered with Notice to plead within four Days after the De-

livery thereof, and the Defendant shall plead within the same four Days, without any Impar- lance, and in case the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from London, the Declaration shall be delivered, with Notice to plead within (a) eight Days after the (b) Delivery thereof, and the Defendant shall plead within the said eight Days without any Impar- lance; and on Default of Pleading as aforesaid, the Plaintiff may sign his Judgment; any Rule of this Court to the contrary notwithstanding.

By the Court.

(a) The four and eight Days are accounted exclusive in this Court. See Mich. 10 Geo. II. Hil. 2 Geo. II. and Tri. 1 Geo. II.

(b) In both Cases the Declaration must be delivered at least four Days before the end of the Term exclusive of the Day of Delivery; otherwise the Defendant is intitled to an Impar- lance.

The Defendant is not bound to plead to a Declaration by Original till Oyer, and a Copy of the Original is given him if he demands it.

If the Plaintiff in his Declaration sets forth a Provert in Cur' of any Deed, Writing, Letters of Administration, or the like, the Defendant may pray Oyer, and must have a Copy thereof delivered to him, paying for the same after the Rate of four Pence per Sheet, and also for the Stamps, and shall have such Time to plead after the Delivery, as he had when he demanded Oyer. So likewise if the Defendant in his Plea make a Provert of any Deed, &c. the Plaintiff may pray Oyer, and shall have a Copy at the like Rate, and the same Time to reply as he had at the Time of demanding Oyer.

If a Judgment or Matter of Record in the same Court be pleaded, the Party pleading the same must on Demand give a Note in Writing of the Term and Number-Roll whereon such Judgment or Matter of Record is entered and filed, or in Defaults thereof the Plea is not to be received.

If the Defendant plead a dilatory or frivolous Plea, the Court on Motion will order that he stand to his Plea, or plead some other Plea peremptorily on the Morrow; or if it be towards the end of the Term, (that the Plaintiff may have sufficient Time to give Notice of Trial) the Court will order the Defendant, if he will not abide by his Plea, to plead another Instantly, provided always that the Time allowed by the common Rule to plead be expired; and the Practice is the same with regard to frivolous Demurrers.

The Defendant cannot waive the general Issue, and instead thereof give a special Plea or Demurrer, nor waive a general Demurrer and give a special Demurrer or special Plea. But if a special Plea or special Demurrer be given in, and the Book is made up, and delivered to the Defendant's Attorney; he may strike out the special Plea or Demurrer, and return it with the general Issue or general Demurrer.

If a Defendant is bound by Rule or Order of Court, to plead by a Time therein limited, it is incumbent on him to plead by such Time, altho' the Plaintiff does not enter any Rule to plead, or call for a Plea.

If a Defendant be bound by Rule of Court or Order of a Judge, to plead an Issuable Plea, and take Notice of Trial, and plead accordingly, and the Plaintiff replies, the Defendant may without Breach of the Rule or Order Demur to the Replication.

If four Terms are elapsed after the Declaration is delivered, the Defendant shall have a whole Term's Notice to plead before Judgment can be entered against him, or if a Cause hath continued four Terms without Prosecution before Issue joined, each Party shall have a whole Term's Notice to Reply, Rejoin, &c. unless the Cause has been stayed by Injunction or Privilege.

If the Plaintiff amend his Declaration, the Defendant shall have two Days exclusive of the Day of Amendment, to alter his first Plea or plead any other.

If the Defendant hath pleaded to Issue, and the Plaintiff neglects to enter the Issue the same Term it is joined, the Defendant may within the first five Days of the ensuing Term waive or alter his Plea or Demurrer. *Quære*, Can he waive the general Issue?

In Order to plead two or more Matters, it is not necessary that Affidavit be made of the Facts; but the Court expects to be informed what the Matters be that are desired to be pleaded in order to Judge whether they are proper.

Pleas to the Jurisdiction of the Court, or in Abatement, and every Plea of Tender or Uncore price, ought to be pleaded before the Rules are out, and cannot be pleaded after a general Imparlane. See East. 5 Ann.

Special Pleas are to be left with the Clerk of the Papers. See Mich. 2 W. & M.

General Pleas are wrote on double Penny stamp Paper, and delivered to the Plaintiff's Attorney, or if his Place of Abode be unknown, the Plea may be entered in the general Issue Book kept by the Clerk of the Dockets, for which you pay four Pence, and you pay the Plaintiff's Attorney one Shilling for the Entry.

## Mich. 6 Geo. II. 1732.

Notice fixed up in the Office.

Sheriffs.

Notice is hereby given to all Sheriffs and Under-Sheriffs, That upon being served with a Rule, peremptorily to return any Writ issuing out of this Court, or to bring in the Body of any Defendant within six Days after Notice; if the same be not done in the said Time, they will be liable to an Attachment without a further Rule as heretofore. (a)

## Mich. 9 Geo. II. 1735.

Notice fixed up in the King's Bench Office.

Affidavits.

THE Court having declared, that no Affidavit sworn before a (b) Commissioner in the Country, ought to be, or shall be at any Time hereafter read in Court, or before the Master, but that every such Affidavit ought first to be filed, and a Copy thereof made, and such Copy read.

It is desired, That all such Affidavits be brought to the Clerk of the Rules of this Court, to be filed in such convenient Time, that Copies of them may be duly made, and delivered to the Party filing the same.

Mich.

(a) If the Plaintiff be dissatisfied with the Bail taken by the Sheriff upon the Arrest, and the same Persons offer to become Bail above, the Plaintiff may enter an Exception against them, and serve the Sheriff with a Rule to return the Writ within six Days after Notice, and on the Return of the Writ may serve him with the like Rule to bring in the Body, according to the above Rule, altho' where the Sheriff hath taken insufficient Bail, and the Defendant is at large, or hath escaped, and the Return of the Writ is passed, he cannot comply with the Letter of the Rule, but the Intent thereof is, that good Bail be put in, or the Sheriff will be liable to an Attachment.

(b) But Affidavits sworn before a Judge in Town may be read before filing.



Mich. 10 Geo. II. 1736.

Declaring by the Bye.

*A General Rule, for settling and declaring the Practice of this Court touching Declaring by the Bye, in Cases where the Plaintiff in any Action or Suit, hath filed or shall file common Bail for the Defendant, pursuant to the late (a) Act of Parliament, For preventing Frivolous and Vexatious Arrests :*

*It is Ordered, That in all such Cases the Plaintiff in such Action or Suit, wherein Common Bail hath been or shall be so filed as aforesaid, may deliver a Declaration by the Bye against such Defendant, in like Manner as might have been done by the ancient Course of this Court: But that no other Person, except such Plaintiff, is or shall be capable of delivering a Declaration by the Bye, against any Defendant, by Reason of Common Bail being so filed by any Plaintiff as aforesaid. (b)*

Filing Common Bail for Defendant.

*And for the better distinguishing by whom Common Bail shall have been filed in any Action or Suit : It is further Ordered, That from and after the last Day of this Term, in all Cases where Common Bail shall be filed by the Plaintiff for the Defendant, by Virtue of the said Act, these Words shall be written on the Bail-piece, viz. (Filed according to the Statute) or Words to the like Effect.*

*By the Court.*

(a) Stat. 12 Geo. I. cap. 29. & 5 Geo. II. cap. 27.

(b) *When the Defendant has filed Common or Special Bail for himself, any Person may deliver or file a Declaration against him by the Bye, at any Time during the Term wherein the Process against the Defendant is returnable, sedente Curia ; and the Practice hath been, that the Plaintiff at whose Suit the Process is, might declare against the Defendant in as many Actions as he thinks fit before the end of the next Term after the Return of the Process.*

(c) *The four and eight Days in this Court are reckoned exclusive.*

(d) *Delivering a Declaration unless de bene esse before Bail put in is a Waiver of the Bail, see the Note, Mich. 8 Ann.*

*A Declaration may be amended in Matter of Form after a General Issue pleaded, and before Entry, without paying Costs or giving an Imparance ; but if amended in Substance, the Plaintiff must pay Costs, or give an Imparance ; and if the Amendment be in Substance after a special Plea pleaded, the Plaintiff must pay Costs tho' he had rather give an Imparance.*

*In all Cases of Amendment after Plea pleaded, the Defendant has Liberty to plead again, and has two Days for that Purpose after the Amendment made and Payment of Costs.*

*If a Rule to plead be entered the same Term the Amendment is made, tho' before such Amendment, it is sufficient, otherwise a new Rule to plead must be entered. The Plaintiff after Plea pleaded, or after the End of the second Term, shall not add a new Count to his Declaration under Pretence of amending his Declaration.*

*A Bill on the File may be amended at any Time before Plea pleaded during the Term of which it is filed, but not afterwards without Leave of the Court.*

*The Plaintiff may, if he sees Occasion, discontinue either before or after Declaration delivered by Motion at the Side-Bar, on Payment of Costs.*

*On Process out of the Court of King's Bench, returnable at a Day certain, if the Defendant appear by his Attorney and file Bail of the Term wherein the Process is returnable, and the Plaintiff doth not declare before the End of the Term next following, a Non-profs may be signed without entering any Rule to declare, or calling for a Declaration, and the Defendant shall have Costs taxed as usual, Stat. 13 Car. II. cap. 2. and if the Declaration should be tendered at any Time after the End of the second Term, and before the Non-profs is signed, the Defendant is not bound to accept of it, but may sign his Non-profs at any Time after the End of the second Term.*

*But if the Proceedings are by Original, the Defendant, must, before the End of the second Term, or within four Days after, enter a Rule for the Plaintiff to declare, and demand a Declaration in Writing ; and if the Plaintiff does not declare before the Rule is out, the Defendant may at any Time before the Effoin-day of the next Term, sign a Non-profs, but not afterwards ; the Practice in this Case being the same as in the Common Pleas. See the Rule there. Mich. 9 Anne, reg. 3.*

The same Term, 1736.

A General Rule.

*Delivering Declarations de bene esse.*

*It is Ordered, That from and after the last Day of this Term, upon all Process to be issued out of this Court, returnable the first or second Return of any Term, where no Affidavit shall be made and filed of the Cause of Action, pursuant to the late Act of Parliament for preventing Frivolous and Vexatious Arrests, the Plaintiff may deliver the Declaration de bene esse, at the Return of such Process, with Notice to plead in (c) eight Days after the Delivery thereof ; and if the Defendant doth not file Common Bail, and plead within the said eight Days, the Plaintiff having filed Common Bail for such Defendant, according to the said Act, may sign Judgment for want of a Plea, a Rule to plead being duly entered.*

*And it is further Ordered, That from and after the last Day of this Term, upon all Process to be issued and made Returnable as aforesaid, where an Affidavit shall be made and filed of the Cause of Action, pursuant to the said Act, the Declaration may be (d) delivered de bene esse, at the Return of such Process, with Notice to plead in (c) four Days after such Delivery, if the Action be laid in London or Middlesex, and the Defendant lives within twenty Miles of London ; and in eight Days, if the Action is laid in any other*

[q]



Trin. 1738.

Rules and Orders in B. R.

Trin. 1739.

other (e) County, or the Defendant lives above twenty Miles from London; and if the Defendant puts in Bail, and doth not plead within such Time as is respectively before mentioned, Judgment may be signed, a Rule to plead being duly entered.

By the Court.

Trin. 10 & 11 Geo. II. 1737.

Records of Nisi prius.

**T**O prevent Delays in the Trial of Causes in the Circuits, It is Ordered by all the Judges of England, That in every Cause to be tried before them in their respective Circuits, the Writ and Record shall be enter'd together, and that no Record shall be received without the Writ.

|               |   |               |   |                 |
|---------------|---|---------------|---|-----------------|
| Wm. Lee,      | { | Alex. Denton, | { | J. Fortescue A. |
| J. Willes,    |   | Law. Carter,  |   | W. Thomson,     |
| Ja. Reynolds, |   | E. Probyn,    |   | W. Fortescue.   |
| F. Page,      |   | J. Comyns,    |   |                 |

Trin. 1738.

Notice fixed up in the Office, June 2, 1739.

Rolls.

**C**omplaint having been made to the Lord Chief Justice of this Court, by Samuel Billingsley, Stationer, that several Persons presume to deliver out the Rolls of this Court without any Appointment for that Purpose, This is therefore to give Notice, That from and after the End of this

(e) Actions upon the Case, Trespass for Goods, Assault or Imprisonment and other transitory Actions, except Debt, Scan. Mag. Escape, Deceit, on a false Return, against a Carrier or Lighterman, on the Stat. of Usury, Covenant, and it's said on a Note; are to be laid in their proper Counties; or on Motion made before the Rules for Pleading are out, and Affidavit that the Action arose in the County of — and not in the County of — (where the Action is laid) or elsewhere, the Court will change the Venue. See Mich. 1654. fec. 5.

But if Evidence necessary to support the Action arises in two Counties, the Venue may be laid in either County, or if the Plaintiff will be bound to give some material Evidence in the County where the Action is laid, the Court will not change the Venue.

If a Barrister, Attorney or Officer of the Court be Plaintiff, and the Action be laid in Middlesex, the Court will not change the Venue; and if any such Person be a Defendant and sued in any other than in Middlesex, the Court will on Motion alter the Venue to Middlesex; but where they sue or are sued in Auter droit as Executors, &c. or jointly with other Persons, then they lose their Privilege.

After the Effoin-day of the subsequent Term after Appearance, the Plaintiff shall not alter his Venue, tho' he would pay Costs, or give an Impur lance.

present Trinity Term, no Roll or Rolls will be received and allowed for by the Clerk of the Treasury of this Court, unless the said Rolls are marked with the said Samuel Billingsley's Mark.

Trin. 1739.

Notice fixed up in the Office, June 28, 1739.

Non Omitas to the Liberty of Ely.  
**T**AKE Notice, That I Robert by Divine Permis-  
sion Lord Bishop of Ely, Lord of the Royal Fran-  
chise of Ely, the Liberty of the Bishop of Ely, claim the  
Execution of all Process and Return of Writs within the  
Royal Franchise of Ely in the Isle of Ely and County of  
Cambridge, and I have constituted Edward Partheriche of  
Ely in the said Isle and County, Esq; my Bailiff, to execute  
the said Process and make Returns thereof in his Name,  
and that in Case you make out any Writ or Writs of Non  
Omitas, directed to the Sheriff of the said County in or-  
der to enter my Liberty of Ely, without first issuing previous  
Process to warrant the same, and a Mandavi Ballivo re-  
turned thereon by the said Sheriff and filed, I will commence  
one or more Action or Actions against you for the same. Gi-  
ven under my Hand this 28th. Day of June, 1739.

R. Ely.

To Edward Ventris, Esq;  
Chief Clerk of the  
Court of King's Bench.

Mich. 14 Geo. II. 1740.

*No Attorney to be Bail.*

I. A General Rule. It is Ordered, That no Attorney of this or any other Court shall be Bail in any Action or Suit depending in this Court. (a)

*By the Court.*

The same Term.

*No Bailiff to be Bail.*

II. A General Rule. It is Ordered, That no Sheriff's Officer, Bailiff, or other Person concerned in the Execution of Process, be permitted to be Bail in any Action or Suit depending in this Court.

*By the Court.*

Hil. 14 Geo. II. 1740.

*Trials in the Circuits and entering Causes.*

Whereas for regulating Trials by Nisi Prius in the Circuits, an Order was made by all the Judges of England in Trinity Term in the 10th and 11th Years of his present Majesty, That in every Cause to be tried before them in their respective Circuits, the Writ and Record should be entered together, and that no

(a) Reg. Mich. 1654. sec. 1.

Record should be received without the Writ; which Order hath not fully answered the Intent thereof, but notwithstanding many Inconveniences do still happen to the Suitors, by delaying or putting off the Trials of their Causes:

Now in Order more effectually to prevent these Inconveniences for the future,

It is Ordered by all the Judges of England, That no Writ and Record of Nisi prius shall be received at the Assizes in any County in England, unless they shall be delivered to, and entred with the Marshal, before the first Sitting of the Court after the Commission-day, except in the Counties of York and Norfolk, and there the Writs and Records shall be delivered to be entered with the Marshal, before the first Sitting of the Court, on the second Day after the Commission-day, otherwise they shall not be received.

And that every Cause shall be tried in the Order in which it shall be so entred, without any Preference or Delay, unless it shall be made out to the Satisfaction of the Judge in open Court that it is impracticable or inconvenient so to do; who thereupon may make such Order for the Trial of the Cause so put off, as to him shall seem just.

And it is further Ordered, That a List of the Causes, when so entered as aforesaid, shall be made by the Marshal, and forthwith fixed up in some publick Place in the Nisi Prius Court, there to remain during the whole Time of the Assizes.

|            |   |                 |   |              |
|------------|---|-----------------|---|--------------|
| W. Lee.    | } | Law. Carter.    | } | T. Parker.   |
| J. Willes. |   | J. Fortescue A. |   | M. Wright.   |
| F. Probyn. |   | W. Fortescue.   |   | Ja. Reynolds |
| F. Page.   |   |                 |   | Tho. Abney.  |



# T H E T A B L E.

## *Abatement.*

See *Pleading* 4.

## *Acetiams.*

1. **N**O *Acetiam* to be inserted in Writs against Heirs, Executors or Administrators, or where special Bail is not required. *Mich.* 15 *Car.* II. *reg.* 2.
2. In special Writs the Cause of Action need not be set forth at large in the *Acetiam*. *Hil.* 2 *Geo.* II. *reg.* 1.
3. —Specimens thereof. *Ibid.* *reg.* 2.

## *Actions.*

1. — to be laid in their proper Counties. *Mich.* 1654. *sec.* 5. — *Mich.* 10 *Geo.* II. *reg.* 2. the Note (c) and see *Venus* 1. to 8.

## *Additions.*

See *Affidavits* 1.

1. The Defendant's Degree, Quality or Mystery, to be inserted in Actions of Trespass, *Vi & Armis Contra Pacem*, &c. *Mich.* 15 *Car.* II. *reg.* 4.

## *Admission.*

See *Attorney* 1, 2. *Pauper* 1.

## *Affidavits.*

1. The true Place of Abode and Addition of Persons making Affidavit to be inserted therein. *Mich.* 15 *Car.* II.
2. Affidavits taken in the Country to be filed before read in Court or used before the Master. *Mich.* 9 *G.* II.
3. — But need not, if sworn before a Judge in Town. *Ibid.* Note (b).

## *Amendment.*

See *Declarations* 23. to 25.

## *Appearances.*

See *Bail* 1. to 8.

1. Voluntary Appearance invalid, unless Process be sued out in 14 Days. *Trin.* 4 *W. & M.* *reg.* 1.
2. Attorneys at the End of every Term were to deliver to the Secondary a Note of Appearances made to them *Easter* 1657.

3. Attorneys not appearing according to their Undertaking liable to Attachment. *Mich.* 1654. *sec.* 10.

## *Arrest.*

1. A Defendant discharged from Arrest shall not be arrested again at the same Time at the same Plaintiff's Suit. *Mich.* 15 *Car.* II. *reg.* 2.

## *Arrest of Judgment.*

1. Four Days to move in Arrest of Judgment after Entry of the Rule. *Easter* 5 *Geo.* II. *reg.* 3. Note (c).
2. Sunday or any Holiday to be accounted one of the four Days, unless it be the last. *Ibid.*

## *Attachment.*

See *Attorneys* 15. *Sheriffs* 4.

## *Attachment of Privilege.*

See *Attorneys* 21. 23.

## *Attendances.*

See *Attorneys* 8.

## *Attorneys.*

1. How and who were formerly to be admitted Attorneys. *Mich.* 1654. *sec.* 1. & *sec.* 4.
2. Attorneys not to act unless admitted and sworn according to the Stat. 2 *Geo.* II. the Note *Mich.* 3 *Ann.*
3. — should procure themselves to be admitted of some Inns of Court. *Mich.* 3 *Ann.* *Mich.* 36. and *Trin.* 29 *Car.* II. *Mich.* 1654 *sec.* 1.
4. — except they are Housekeepers in London, or the Suburbs, &c. *Mich.* 3 *Ann.*
5. — at what Time they are to appear in Court in each Term. *Trin.* 14 *Car.* II. *Hil.* 14 *Car.* I. or lose their Privilege for Non-Attendance. *Mich.* 1654. *sec.* 1.
6. — to attend the Court on Notice of Motion. *Easter* 1656. *Easter* 14 *Car.* II.
7. — to attend the Master on Notice. *Hil.* 15 *Car.* II. *reg.* 1. *Trin.* 8 *W.* III.
8. — not to be summoned to attend at a Judge's Chambers during the Sitting of the Court. *Mich.* 11 *Geo.* I.
9. — nor attend after the third Day after the Term to make Rules. *Trin.* 14 *Car.* II. *reg.* 2.
10. Attornies

## The TABLE to the Rules and Orders in B. R.

10. Attornies paying 2 s. each Term to the Clerk of the Declarations may file Bills, &c. and search Files *Gratis*. *Easter 19. and Mich. 15 Car. II. reg. 3.*

11. No Distinction now used between the Clerks of the Office and Attornies. *Trin. 1 Jac. II. Note (b). Mich. 5 Ann. reg. 1. (c).*

12. — not to receive Pleadings which ought to be left with the Clerks of the Papers. *Trin. 2 Jac. I. Trin. 16 Car. II. Mich. 2 W. & M.*

13. — to enter in the Office all Pleas and Demurrers in three Days after Term. *Hill. 14 Car. II.*

14. The Attorney not to be changed without an Order and Notice to the adverse Party. *Mich. 1654. sec. 10.*

15. — not appearing according to their Undertaking liable to Attachment. *ibid. sec. 10.*

16. — not to procure or receive Blank Warrants, nor before the Writ is sued out. *15 Car. II.*

17. — not to suffer others to practise in their Names. *Mich. 1654. sec. 1. 10.*

18. — nor after Dismission by one Court to practise in another Court. *ibid.*

19. Retainer of an Attorney of C. B. by an Attorney of the Upper Bench, &c. &c. sufficient. *Mich. 1654. sec. 10.*

20. No Attorney to be Bail or Lessee in Ejectment. *Mich. 1654. sec. 1.*

21. A Jury of Attornies to be impannelled once in three Years for reforming Abuses, and Twelve appointed to examine Attornies before Admittance. *Mich. 1654. sec. 3, 4. disused.*

22. Attornies not to bring Actions till a Month after their Bills are delivered. *Mich. 5 Ann. reg. 3. (a).*

23. In what Time an Attorney or Person sued by him must plead. *ibid. (a).*

24. — their Privilege as to laying and altering the Venue. *Mich. 10 Geo. II. reg. (e).*

### Audita Querela.

1. No Audita Querela to be allowed, or Bail taken therein, but in open Court. *Trin. 9 Jac. I.*

### Bail (Common.)

1. IN what Time Common Bail was formerly to be filed. *Mich. 16 Car. II.*

2. Defendant now to file Common Bail in eight Days after Service of Process, or Plaintiff may do it for him. *Ibid. the Note (d)*

3. If Bail be filed by the Plaintiff for the Defendant according to the Statute, it must be so marked on the Bail-piece. *Mich. 10 Geo. II. reg. 1.*

4. The Fees taken for filing Common Bail. *Trin. 4 W. & M. reg. 2.*

5. Common Bail to be filed on Judgments acknowledged by Warrant of Attorney. *Hill. 1 W. & M.*

6. — to be filed on Judgments by Confession or Default. *Trin. 4 W. & M. reg. 2.*

7. — to be filed by Defendant's Attorney in Ejectment. *Mich. 33 Car. II.*

8. Formerly Attornies were to deliver to the Secondary a Note of Appearances made to them, that it might be seen if Common Bails were filed. *Easter 1657. reg. 2.*

9. In what Cases Special Bail is not required. See 11. to 15.

### Bail (Special).

10. Where the Debt is 10 l. or above, and Affidavit made thereof, Special Bail must be put in. *Stat. 12 G. 1.*

11. No Special Bail in Debt on a Judgment, unless the Debt or Damages without Costs amount to 10 l. *Easter 5 Geo. II. reg. 1. (d).*

12. — nor in Covenant, unless by Rule of Court, or the Covenant be for Payment of Money. *Ibid.*

13. — nor in Actions against Bail on the Bail-Bond. *Mich. 8 Ann. (f).*

14. — nor in Battery, false Imprisonment, Privilege (except for Fees) or Slander of Title, unless Special Motion and Order. *Mich. 1654. sec. 9.*

15. — nor in Actions against Heirs, Executors or Administrators. *Mich. 15 Car. II. reg. 2.*

16. The Husband to put in Bail for his Wife as well as himself. *Easter 5 Geo. II. reg. 1. (d).*

17. Special Bail in London and Middlesex to be put in in four Days after the Return of the Writ, in other Counties in six. *Mich. 8 Ann. reg. 1. — Former Rule. Easter 11 W. III. reg. 2.*

18. Sunday, if it be the last Day, not accounted one of those Days. *Mich. 8 Ann. reg. 1. (e).*

19. Notice to be given in Writing of Bail put in on a *Capi corpus*. *Mich. 16 Car. II. — Former Rule, Mich. 21 Car. I.*

20. Bails how taken by Commissioners in the Country. *8 W. III. reg. 3.*

21. — the Form of the Bail-piece, and Condition of the Recognizance. *Ibid.*

22. — to be transmitted in eight Days, if within forty Miles of London, if above, in fifteen. *Ibid.*

23. Affidavit to be made of the due taking thereof. *Ibid.*

24. Exception to Bail to be made in twenty Days after Notice, or of no Validity. *Mich. 8 Ann. reg. 2. — 8 W. III. reg. 3. Mich. 16 Car. II.*

25. Exception to Bail before a Judge to be entered in the Judge's Bail-Book. *Mich. 8 Ann. reg. 2. (a).*

26. Exception to Bail by Original to be entered in the Filazer's Book. *Easter 2 Geo. II.*

27. No excepting to Bail after Declaration delivered, unless delivered de bene esse. *Mich. 8 Ann. reg. 2. (a). Easter 5 Geo. II. (a).*

28. After the Plaintiff hath taken an Assignment of the Bail-Bond, and the same Persons become Bail above, he cannot except against them. *Mich. 8 Ann. (f).*

29. If the Plaintiff be dissatisfied with the Bail taken by the Sheriff, and they offer to become Bail above, he may give a Rule to return the Writ, and the like to bring in the Body; on Default, may have an Attachment against the Sheriff. *Mich. 6 Geo. II. (a).*

30. Bail on Exception in Term to be perfected in four Days after Notice of Exception in Writing. *Easter 5 Geo. II. reg. 1.*

31. — if in the Vacation, the first Day of the subsequent Term. *Ibid.*

32. Bail in Town are to be justified in Court. *Easter 5 Geo. II. reg. 1. (d).*

33. — If in the Country by Affidavit. *Ibid. and 8 W. III. reg. 3.*

34. If Bail be accepted, it ought to be filed in twenty Days. *Trin. 13 Car. II. Former Rules, Hill. 1650. Hill. 23 Car. I.*

35. Bail taken before the Continuance-Day is to be filed of the preceding Term; if after, of the subsequent Term. *Easter 5 Geo. II. reg. 1. (d).*

## The TABLE to the Rules and Orders in B. R.

36. The Fees for filing Bail on a *Capi corpus* to be left in the Hands of the Judges Clerk for the Secondary. *Easter 29 Car. II.*

37. — and they are in fix Days after Term to give a Note of all Bails remaining in their Hands. *Ibid.* and *Mich. 16 Car. II.*

38. One that is Bail cannot be a Witness, but may be changed. *Easter 5 Geo. II. reg. 1. (d).*

39. No Attorney to be Bail. *Mich. 1654. sec. 1.*

40. Bail are liable for so much as is sworn due and indorsed on the Process, though the Plaintiff recovers more than the Action was laid for. *Easter 5 Geo. II. reg. 2. Former Rule, Trin. 2 Car. II.*

41. Bail are discharged by the Defendants declaring in a wrong County, if the Action be by Original, otherwise if by Bill. *Easter 2 Geo. II. (a).*

### Bail rendering the Principal.

42. Bail may take the Principal on a Sunday, and render him the Day after. *Trin. 1 Ann. reg. 2. (b).*

43. Bail are liable on the Return of the Ca. Sa. against the Principal, should he then die. *Easter 5 Geo. II. reg. 3. (c). Trin. 1 Ann. reg. 2. (c)*

44. — Proceedings stayed on a Render after a Ca. Sa. returned, but not filed. *Easter 5 G. II. reg. 3. (c).*

45. If there be no Ca. Sa. the Bail may plead it and be discharged. *Ibid.*

46. The Ca. Sa. must lie in the Sheriff's Office four Days before the Return. *Ibid.*

47. What Time the Bail have by the Favour of the Court to render after a Scire facias brought. *Ibid.*

48. What Time where an Action is brought on the Recognizance. *Trin. 1 Ann. reg. 1.*

49. On what Terms Proceedings against Bail may be stayed where a Writ of Error is depending. *Ib. Note (a).*

50. What Notices are to be given on rendering Defendant. *Trin. 1 Ann. reg. 2.*

51. — with whom the Redditi se is to be left. *Trin. 3 Ann.*

52. Bail are liable after Render if Defendant escape from the Tipstaff after the Return of the Ca. Sa. *Trin. 1 Ann. reg. 2. (c).*

53. — are liable till Notice and an Exoneretur be entered. *Trin. 1 Ann. reg. 2. Trin. 3 Ann. (d).*

### Bail in Audita Querela.

54. No Bail to be taken therein but in open Court. *Trin. 9 Jac. I.*

### Bail in Error.

55. Notice thereof to be given. *Mich. 5 W. & M.*

56. Exception to be made in twenty Days. *ibid.*

57. Exception to be entered in the Clerk of the Errors's Book. *ibid. the Note (c).*

58. Bail must justify, or better Bail be put in, in four Days after a Rule. *ibid.*

59. — cannot render the Plaintiff in Error. *ibid.*

60. In what Cases Error is no Superfedeas till Bail put in. *ibid. (a) and see Title Error.*

### Bail on Habeas Corpus.

61. In all Cases of Removal by Habeas Corpus or Certiorari Special Bail ought to be put in. *Mich. 1654. sec. 9. Hill. 2 Jac. II.*

62. — Except in Actions for Scandal, little Inults, or the Defendant be an Executor; or Administrator. *Hill. 2 Jac. II.*

63. Bail on Habeas Corpus not to be taken absolutely. *Mich. 1654. sec. 8.*

64. — not to be put in till the Writ be returned. *Mich. 1651. Easter 29 Car. II. Hill. 10 W. III.*

65. — how taken before Commissioners. — *8 W. III. reg. 3.*

66. Notice of putting in Bail to be given in Writing. *Mich. 16 Car. II. (b).*

67. Exception to be made in twenty-eight Days after Notice. *Mich. 16 Car. II. Former Rule, Mich. 1645. sec. 8.*

68. — to be filed in four Days after the twenty-eight. *ibid.*

69. The Fees for filing Bail on Habeas Corpus. *Easter 29 Car. II.*

70. A Procedendo, unless Bail be put in in four Days after a Rule, and Notice thereof in Term, and six Days in the Vacation. *Hill. 10 W. III. (c). Former Rule, Mich. 1654. sec. 8.*

71. — after Exception a Rule for a Procedendo in four Days, unless better Bail, whether in Term or Vacation. *ibid. and Mich. 16 Car. II. (a).*

72. Defendant in Custody not to be discharged till the Bail is perfected. *Hill. 2. Ja. II. (f).*

73. The Bail are liable to all Actions in the Return of the Habeas Corpus, declared upon in two Terms. *ibid.*

### Bail Bond.

1. — to be in double the Sum sworn due. *Mich. 8 Ann. reg. 1. (d).*

2. — when Actions may be brought thereon. *Mich. 8 Ann. A former Rule, Easter 11 W. 3. reg. 2.*

3. On what Terms the Court will stay Proceedings on the Bail Bond. *Mich. 8 Ann. (f).*

4. A Prisoner taken upon a Capias in Process not to be discharged till he hath given a Bond to appear. *Mich. 1654. sec. 6.*

### Bailiffs.

1. — not to practice as Attornies. *Mich. 1654. sec. 1.*

2. — wilfully delaying the Execution of Writs, taking undue Fees, or giving Defendant Notice, liable to Attachment. *ibid. sec. 2.*

3. — liable to severe Punishment on taking from Prisoners in their Custody Warrants to confess Judgment, unless in the Presence of an Attorney. *Easter 15 Car. II.*

### Baron and Feme.

1. The Wife taken without the Husband, discharged on filing common Bail. *Trin. 2 Geo. 1. (c).*

2. Husband to put in Bail for himself and Wife. *Easter 5 Geo. 2. reg. 1. (d).*

### Capias ad satisfaciendum.

1. If the Proceedings are by Bill, there ought to be eight Days between the Teste and Return of a Ca. Sa. and fifteen if by Original. *Easter 5 Geo. II. reg. 3. (c).*

2. The Ca. Sa. ought to lie four Days in the Sheriff's Office in order to charge Bail. *ibid.*

3. After Judgment, with Stay of Execution, a Ca. Sa. may be sued out to warrant a Teitatum Ca. Sa. against the Defendant, but not to affect Bail. *ibid.*

## The TABLE to the Rules and Orders in B. R.

### Carts and Drays.

1. — not to pass between the Hours of Eight and Two in Term-Time in King-street. Hill. 3 & 4 Jac. II. reg. 3.

### Certiorari.

1. No Certiorari on a Writ of Error to be sued forth without Motion, after a Certiorari already returned in the same Cause. Easter 11 Car. I. and see Bail 61.

### Chester.

See Sheriffs 10.

### Clerks of the Office.

1. Clerks of the Office not to suffer any one to set their Names to accountable Writs. Hill. 1657.
2. — to have Access to the Rolls. Hill. 1657.
3. — Postas to be delivered only to them. *ibid.*
4. — suffering others in Arrears to sign Writs, or file Rolls in their Names to pay such Arrears. Trin. 20 Car. II.
5. No Distinction now between the Clerks and Attornies. Trin. 1 Jac. II. (b). Mich. 5 Ann. reg. 1. (c).
6. How the Clerks formerly were to account with the Secondary. Easter 15 Car. II. Hill. 15 & 16 Car. II. reg. 3. Trin. 20 Car. II.

### Clerk of Assize.

See Postea 2.

### Clerk of the Declarations.

See Fees 3.

### Clerk of the Errors.

See Error 9.

### Clerk of the Postas.

See Postea 1.

### Concilium.

1. — when to move for a Concilium. Trin. 1 Geo. II.

### Costs.

1. Costs on Amendment, Mich. 1654. *sect.* 13. Mich. 10 Geo. II. reg. 2. Note (d).
2. — for not executing Inquiry. Hill. 8 Geo. I. (a).
3. — for not proceeding to Trial after Notice. Mich. 4 Ann. (c).
4. Upon Removal by Habeas Corpus, the Costs below to be considered, and cast into the Judgment. Mich. 1694. *sect.* 22.
5. — if Judgment be for Defendant, the Charges of putting in Bail. *ibid.*

### Countermands.

See Trial 7, 9.

1. — to be in Writing. Mich. 4 Ann. (c).

### Days exclusive or inclusive.

1. — for delivering Declaration. Trin. 5 & 6 Geo. II. (b).
2. — to plead. Mich. 10 Geo. II. reg. 2. Trin. 5 & 6 Geo. II. (a).
3. — to plead in Abatement. Easter 5 Ann. (a).
4. — to Reply, Rejoins, &c. Trin. 1 Geo. II. Note (d).
5. — for keeping the Paper Book. *ibid.*
6. — for Notice of Trial. Mich. 4 Ann. (c).
7. — Scire Facias to lie four Days exclusive in the Office. Easter 5 Geo. II. reg. 3.

### Declarations.

1. In Declarations, unnecessary Repetitions of the Original Writ to be avoided, and only the Nature of the Action to be repeated. Mich. 1654. *sect.* 12.
2. — upon an original *Clausum fregit*, to mention the Place certainly. *ibid.*
3. — in Covenant to repeat no more of the Deed than necessary. *ibid.*
4. — in Slander, long Preambles to be forborn. *ibid.*
5. — on General Statutes not to repeat the Statute. *ibid.*
6. — in Debt on a Judgment not to repeat the Declaration and Judgment, except against Executors or Administrators. *ibid.* 13.
7. A Copy of the Declaration to be delivered to the Defendant's Attorney, who is to pay for the same. Trin. 12 W. III.
8. — on Non-payment to be left in the Office. Trin. 12 W. III.
9. Declarations not to be delivered to any Solicitor. Easter 1657.
10. — may be left in the Office, if the Abode of the Defendant's Attorney be unknown. Trin. 2 Geo. II.
11. — or if he refuse to pay for the Copy. *ibid.*
12. On Process returnable the first or second Return of any Term; the Declaration to be delivered, with Notice to plead in four or eight Days. Trin. 5 & 6 Geo. II.
13. If Bail be filed by the Plaintiff, Declaration to be left in the Office, and Notice given. Trin. 1 Geo. II.
14. — where no Affidavit is made of the Debt, Declaration may be delivered *de bene esse*, with Notice to plead in eight Days. Mich. 10 Geo. II. reg. 2.
15. — and where Affidavit is made, with Notice to plead in four Days, if in London or Middlesex, &c. otherwise in eight. *ibid.*
16. — the four and eight Days are accounted exclusive. *ibid.* Note (c).
17. Of delivering Declarations by the Bye. Mich. 10 Geo. II. reg. 1. Note (b).
18. — In Case the Plaintiff file common Bail for the Defendant, no other Person to deliver a Declaration by the Bye. Mich. 10 Geo. II. reg. 1.
19. Attornies not to deliver or receive Declarations varying from the Original Writ, or more than one on such Writ. Hill. 8 Car. I.
20. Delivering Declaration, unless *de bene esse*, before Bail put in, is a Waiver of the Bail. Mich. 10 Geo. II. reg. 2. (d).
21. Plaintiff to declare before the End of the second Term, or non-pros'd. *ibid.* (d).

## The TABLE to the Rules and Orders in B. R.

22. Of delivering Declarations to Prisoners. See Prisoners.

23. A Declaration may be amended in Matter of Form without paying Costs, or giving Imparance. Mich. 10 Geo. II. reg. 2. (d).

24. May be amended on Payment of Costs, or giving an Imparance at the Plaintiff's Election. Mich. 1654. *sect.* 13.

25. — if in Substance after a Special Plea, Costs must be paid. Mich. 10 Geo. II. reg. 2. (d).

26. In what Time after Amendment Defendant is to plead de novo. *ibid.*

27. Bill on the File may be amended before Plea pleaded. *ibid.*

28. A new Count not to be added as an Amendment after Plea, or second Term. *ibid.*

29. — Plaintiff may discontinue before or after Declaration delivered, on Payment of Costs. *ibid.*

### Deeds.

See Inrolment 1, 2, 3.

### Demurrers.

1. Copy of General Demurrer Book to be delivered and paid for at 4 *d.* per Sheet, or Judgment. Trin. 12 W. III.

2. General Demurrer cannot be waived. Trin. 5 & 6 Geo. II. Note (b).

3. Special Demurrer may. *ibid.*

4. Special Demurrers to be signed by Counsel. Easter 18 Car. II.

5. In case of a frivolous Demurrer, the Court will order the Defendant to stand by it, or plead de novo on the Morrow, or instantly. Trin. 5 & 6 Geo. II. Note (b).

6. Defendant, when bound to plead an issuable Plea, yet may demur to the Replication. *ibid.*

7. In what Cases the Attornies may make up the Demurrer Book. Trin. 12. W. III. Note (b).

8. Where the Defendant's Attorney may make up the Book. Easter 11 W. III. reg. 1.

9. The Method of Proceeding when the Book is made up by Defendant's Attorney. *ibid.* Note (a).

10. — of going to Argument on Demurrer. Trin. 1 Geo. II. Note (d).

11. Books to be delivered to the Judges two Days before Argument. Easter 2 Jac. II. Note (d).

12. How and by whom delivered. Mich. 17 Car. I.

13. None to deliver Copies of Special Verdicts or Demurrers to the Judges but the Clerks of the Office, who ought to copy them. Hill. 1657.

14. In Demurrers the Cause of Demurrer to be specially assigned. Mich. 1654. *sect.* 17.

15. Matters of Form on both Sides discharged, unless specially assigned. *ibid.*

16. Demurrers were to be entered in the Office in three Days after Term. Trin. 14 Car. II. reg. 2.

### Discontinuance.

1. Plaintiff may discontinue before or after Declaration delivered, on Payment of Costs. Mich. 10 Geo. II. reg. 2. (d).

### Distingas Jur<sup>s</sup>.

1. No Alias or Pluries Distingas with Tales for Trial at Bar to Issue till the former Writ be delivered to the

Secondary, that the Issues forfeited may be estreated. Hill. 15 Car. II. reg. 2.

2. Old Distingas to be delivered to Sheriffs within eight Days after Hillary and Trinity Terms. Easter, 1651.

### Dockets.

See Judgments 3.

### Ejectment.

1. — the Defendant, where he doth not defend the whole, to give a Note of the Premises in his Possession to the Plaintiff. Trin. 15 Car. II. reg. 1.

2. A Latitat to be sued out, and Bail filed before Judgment against Casual Ejector. Mich. 33 Car. II. See the Note (d). Trin. 14 Car. II. reg. 1.

3. — and a Rule to plead entered before Motion for Judgment. Trin. 18 Car. II. Former Rule, Hill. 1649. reg. 1.

4. When Motion for Judgment is to be made. Trin. 18 Car. II. Note (a).

5. No Attorney to be Lessee in Ejectment. Mich. 1645. *sect.* 1.

### Ely.

1. Writs of Non omittas to enter the Liberty of the Bishop of Ely not to be sued out without first issuing previous Process, and a Mandavi ballivo returned. Trin. 1739.

### Error.

1. A Writ of Error is a Superfedeas as soon as allowed, if Execution be not executed. Mich. 5 W. & M. (b).

2. On what Judgments Error is no Superfedeas without Bail put in. *ibid.* (a).

3. The Bail in Error cannot surrender the Plaintiff in Error. *ibid.* Note (c).

4. Notice to be given without Delay of Bail in Error. Mich. 5 W. & M.

5. — if not excepted against in twenty Days, to be allowed. *ibid.*

6. — to justify, or better Bail put in, in four Days after a Rule. *ibid.* (c).

7. When the Paper Books are to be delivered to the Judges. Easter 2 Jac. II.

8. If the Clerk of the Errors neglects his Duty, the Clerk of the Treasury may do it for him. Trin. 20 Car. I.

9. Writs of Error in the Exchequer Chamber how allowed, and Bail put in thereon. Easter 36 Car. II. Easter 16 Car. II. reg. 2.

10. When Copies of Error and Record are to be delivered to the Judges of the Common Pleas and Exchequer. Easter 33 Car. II.

### Execution.

1. — if Execution be not taken out within a Year after Judgment, a Scire Facias must issue to revive the Judgment. Easter 5 Geo. II. reg. 3. Note (c).

2. — but if Execution be issued out, and continued on the Roll, no need of a Scire Facias. *ibid.*

3. — nor in Case of Error or Injunction. *ibid.*

Fees,



## The TABLE to the Rules and Orders in B. R.

### Fees.

1. — to the Secondary on bringing Money into Court. *Easter 5 Jac. I.*
2. — for putting in the Record at Assizes. *Easter 13 Jac. I.*
3. — to the Clerk of the Declarations. *Mich. 15 Car. II. reg. 2. Easter 19 Car. II.*
4. Clerks suffering others in arrear, to aft in their Names, to pay their Arrears. *Trin. 20 Car. II.*
5. Fees, to be paid by the Prisoners in the King's Bench, Dec. 17. 4 Geo. II.

### Fines.

1. What Fines, are to be paid on Original Writs. *Hill. 6 W. & M.*

### Filizars.

See *Bail 25. Writs 2, 3.*

1. — to give their Attendance by the second Return of the Term. *Mich. 15 Car. I.*

### Franchise.

See *Ely.*

### Habeas Corpus.

1. — when to be made returnable immediately, and when not. *Mich. 1654. sect. 7, 8.*
2. — may be granted to the Warden of the Fleet, or Keeper of an inferior Prison, and be a good Cause of Detainer. *Mich. 1654. sect. 7.*
3. In what Cases Bail is required on Habeas Corpus. *Mich. 1654. sect. 9. Hil. 2 Jac. II.*
4. No Bail to be put in on Habeas Corpus till the Writ be returned. *Easter 29 Car. II. Hill. 10 W. III.*
5. — twenty Days to except against Bail. *Mich. 1654. sect. 8. — twenty eight by Mich. 16 Car. II.*
6. Notice to be given of putting in, or excepting to Bail. *ibid.* and see *Bail, 66.*
7. A *Procedendo*, unless Bail in four Days after a Rule and Notice, in Term, and six Days in the Vacation. *Hill. 10 W. III. (e). Mich. 1654. sect. 8.*
8. After Exception, a Rule for a *Procedendo* to be in four Days, unless better Bail, whether in Term or Vacation. *Mich. 16 Car. II. (a).*
9. Prisoner not to be discharged 'till the Bail be assented unto, or justified. *Mich. 1654. sect. 7.*
10. The Bail are liable to all Actions in the Return of the Habeas Corpus, declared on in two Terms. *Hill. 2 Jac. II. Note (f).*
11. Plaintiff must declare *de novo*, the Record being not moved by the Habeas Corpus. *Mich. 16 Car. II. Note (a).*
12. The Plaintiff cannot be non-pros'd for not declaring, if Defendant removes by Habeas Corpus. *ibid.*
13. Causes removed from a City or Town where the Judges seldom go, to be laid in that County the City, &c. is. *Mich. 1654. sect. 9.*
14. — what Time the Defendant has to plead. *Hill. 2 Jac. II. Note (f).*
15. On Commitment to the Custody of the Marshal by Habeas Corpus, Prisoner to remain two Days. *Hill. 5 W. & M.*

### Imparlances.

1. — in what Cases formerly entered. *Mich. 1654. sect. 15. Mich. 5 Ann. reg. 3. Note (a).*
2. In what Cases now allowed. *Mich. 5 Ann. reg. 3. Note (a).*
3. No Special Imparlance without Leave. *Easter 5 Ann.*

### Inquiry.

1. What Notice of executing Inquiry must be given. *Mich. 4 Ann. the Note (c).*
2. Defendant obliged to accept of Notice of Inquiry from the Time Notice given of Trial. *Hill. 8 Geo. I.*
3. — the Notice to express the Hour and Place. *ibid. (a).*

### Inrolment of Deeds, &c.

1. No Indenture, Writ of Error, Issue or Demurrer to be inrolled upon Filazers Rolls. *Trin. 1 Jac. II.*
2. Deeds acknowledged in Court to be inrolled on the Rolls of the chief Clerk only, and the Party acknowledging to appear. *Hill. 11 W. III.*
3. — if out of Court the Deed to be produced by the Judge before whom acknowledged. *ibid.*

### Irregularities.

1. Advantage thereof to be taken as soon as they happen. *Hill. 2 Geo. II. reg. 3. (b).*

### Issue.

See *Paper Books.*

1. Copy of General Issue or Demurrer to be delivered and paid for at 4 d. per Sheet, or Judgment. *Trin. 12 W. III.*
2. What Time Plaintiff has to enter his Issue. *Mich. 4 Ann. (c).*
3. Plaintiff on Rule must enter his Issue, or be non-suited. *ibid.*
4. No Rule to enter the Issue the same Term, unless Notice of Trial be given. *ibid.*
5. The Issue to be entered on Record, or an Incipitur thereof made before the Record of Nisi prius be sealed or passed. *Mich. 5 Ann. reg. 1. Former Rules, Easter 1657. Hill. 1649. reg. 2.*

### Judgment.

1. Warrant of Attorney to confess Judgment by a Person in Custody not binding, unless his Attorney be present. *15 Car. II. reg. 2.*
2. Every Judgment or an Incipitur to be entered on the Roll before such Judgment be signed. *Mich. 5 Ann. reg. 1.*
3. For the better finding Judgments the Defendant's Name to be entered in a Docket alphabetically. *Easter 1657. reg. 1.*
4. The Names of Plaintiff and Defendant, the County where laid, and the Nature of the Action, with the Attorney's Name, to be entered in a Book by the Secondary. *ibid. Easter 17 Jac. I.*
5. Warrants of Attorney to be entered on the Judgment Roll. *Easter 4 Jac. II.*
6. How Judgments ought to be entered on the Roll. *Hil.*

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Hill. 1675. Mich. 5 Ann. Easter 5 Geo. II. reg. 3. Note (c).

7. Judgment for not paying for Warrant of Attorney. Mich. 5 Ann. reg. 2.

8. — for not paying for and taking Declaration out of the Office. Trin. 12 W. III.

9. — for want of a Plea. Mich. 10 Geo. II. reg. 2.

10. — for not paying for Copy of General Issue. Trin. 12 W. III.

11. — for not returning the Paper Book. Trin. 1 Geo. II. Note (d).

12. — not to be signed till the Rule is out. *ibid.*

13. When Judgment, though regular, may be set aside. Hill. 2 Geo. II. reg. 3. (a).

14. In Town and Country Causes Judgments may be signed the Day after the Rules for Pleading are out. Hill. 2 Geo. II. reg. 3.

15. In Causes removed by Habeas Corpus the Costs below to be considered and cast into the Judgment. Mich. 1654. *feft.* 22.

16. In Judgments on *Non sum Informatus* or *Nil dicit* in Ejectment, the *Capiatur* to be entered on the first Judgment. *ibid.*

17. No Rule for Judgment on a Writ of *Nisi prius*, or Inquiry, to be given before the Day in Bank. Easter 5 Geo. II. reg. 2. (c).

18. — no Rule on a Nonsuit. *ibid.*

19. — when Judgment may be entered. *ibid.*

20. — when on a Nonsuit. *ibid.*

21. What Time to move in Arrest of Judgment. Easter 5 Geo. II. reg. 3. (c). Hill. 2 Geo. II. reg. 3. (b).

22. Judgment must be revived by *Scire Facias*, if no Execution within a Year. Easter 5 Geo. II. reg. 3. (c).

23. Execution sued out and continued on the Roll as effectual as a *Scire Facias*. *ibid.*

### Jurors and Jury.

1. Three Shillings four Pence to be allowed each Juror lying out one Night for Diet, besides his Lodging. Mich. 1654. *feft.* 19.

2. Sheriffs to give sufficient Summons to Jurors for preventing Tales. Easter 1651.

3. Jurors in old *Distringaffes* to be summoned a Week before the Assizes. *ibid.*

4. On Trials at Bar the Secondary to name forty-eight Jurors, and the Attornies of each Side to strike out twelve. Trin. 8 W. III. reg. 2.

5. If either Party neglect to attend, the Secondary to strike out twelve for him. *ibid.*

6. The Party applying for a Special Jury, to pay the whole Expence. The Note *ibid.*

### Marshal of the King's Bench Prison.

1. — to suffer none in his Custody, or within the Rules, to go out thereof. Mich. 28 Car. II.

2. Fees to be taken by the Marshal of the Prisoners in his Custody. Dec. 17. 4 Geo. II.

3. Rules for the better Government of the King's Bench Prison. Mich. 3 Geo. II.

### Money paid into Court.

1. One per Cent. to be paid to the Secondary on bringing Money into Court. Hill. 5 Jac. I.

### Ne recipiatur.

1. — when it may be entered. Hill. 15 & 16 Car. II.

2. — When at the Sitting after Term. Mich. 4 Ann. (a).

3. Plaintiff hindered of a Trial by a *Ne recipiatur* may try the Cause at the next Sitting, on Notice. Mich. 4 Ann.

### Non omittas.

See Ely 1. Writs 7.

### Non-profs.

1. — may be signed if Plaintiff does not declare before the End of the second Term. Mich. 10 Geo. II. reg. 2. Note (d).

2. — may be signed, though the Declaration be tendered after. *ibid.*

3. — how signed when the Proceedings are by Original. *ibid.* and Mich. 1654. *feft.* 15.

4. On Removal by Habeas Corpus Plaintiff must declare in two Terms after Return of the Writ. Mich. 15 Car. II. (a).

5. If the Defendant remove, he cannot non-profs the Plaintiff for not declaring. *ibid.*

### Nonsuit.

See Non-profs 3.

1. — for not entering the Issue. Mich. 4 Ann. (c).

### Notice.

1. Notices to be in Writing. Mich. 4 Ann. (c).

2. Notice of Bail. Mich. 16 Car. II.

3. — on Habeas Corpus. *Ibid.* (b)

4. — of Declaration left in the Office. Trin. 1 Geo. II.

5. — to appear and plead. Trin. 5 & 6 Geo. 2. Mich. 10 Geo. II. reg. 2.

6. — to plead where four Terms are elapsed. Trin. 5 & 6 Geo. II. (b).

7. — to reply. *ibid.*

8. — of Trial. Mich. 4 Ann. (c). Hill. 8 Geo. 1.

9. — of Countermand. Mich. 4 Ann. (c).

10. — of executing Inquiry. Mich. 4 Ann. Note (c). Hill. 8 Geo. I.

11. — when Sunday or any Holiday is to be accounted one of the Days, see Sunday.

### Officers of the Court.

1. — to appear by the Effoin-Day of the second Return of every Term. Mich. 1654. *sec.* 1.

### Outlawry.

1. — Attorneys to deliver Writs of Proclamation, and Sheriffs duly to execute them. Mich. 1654. *sec.* 6.

2. A Prisoner taken upon a *Capias* in Process not to be discharged till he hath given Bond to appear. *ibid.*

## The TABLE to the Rules and Orders in B. R.

### Oyer.

1. — *In what Time to plead after Oyer.* Trin. 5 & 6 Geo. II. (b).  
See Pleading 12 to 15.

### Palace Court.

1. **T**HE ancient Stile thereof. *Easter* 9 Car. I.

### Paper Books.

#### See *Issue*.

1. *In what Cases Attorneys may make up the Issue.* Trin. 12 W. III. (b).
2. *Where the Plaintiff's Attorney may make up the Paper Book without giving a Rule to rejoin.* Trin. 1 Geo. II. (d).
3. *Book made up in Term, or four Days after, to be returned in four Days.* *ibid.*
4. *If a Plea comes in late, and the Book be made up in eight Days after, to be returned in four Days.* *ibid.*
5. *If the Plaintiff's Attorney accept the Book after the four Days, he cannot sign Judgment.* *ibid.*
6. *If a Book be not delivered within eight Days after the Term, if in London or Middlesex, or a Demurrer, not to be received till four Days in the next Term.* *ibid.*
7. *If to be tried at the Assizes, to be returned in four Days.* *ibid.*
8. *Where the four Days are exclusive, and where inclusive.* *ibid.*
9. *Method of proceeding where the Paper Book is made up by the Defendant.* *Easter* 11 W. III. reg. 1. (a).
10. *In all Paper Books the Names of the Counsel are to be inserted.* *Easter* 18 Car. II.
11. *When Books are to be delivered to the Judges.* *Easter* 2 Jac. II.
12. — the Exceptions insisted on to be marked. *ibid.*
13. — are to be delivered two Days before the Argument, or the Party who does not deliver Books shall not be heard. *ibid.* Note (d).
14. *The Plaintiff to deliver the Paper Book to the Chief Justice and senior Judge, and the Defendant to the other Judges; if either neglect, it shall be done at his Cost by the other before any Argument.* Mich. 17 Car. I.
15. *Causés standing over were formerly to be entered with the Clerk of the Papers within seven Days after the Term.* *Easter* 1658. Disused of late.

### Pauper.

1. *How admitted in Forma Pauperis.* Mill. 3 & 4 Jac. II. reg. 1.

### Payment of Money.

#### See *Money paid into Court*.

### Philizars.

1. — to attend their Offices on Forfeiture thereof. Mich. 15 Car. I.

### Pleadings.

#### See *Imparance, Paper Books, Replication*.

1. *What Time the Defendant had to plead by the ancient Practice.* Mich. 5 Ann. reg. 3. and the Note (a).

2. *Four Days only allowed Defendants to plead from the Time of giving Rules.* Trin. 1 Geo. II.

3. *Sunday when accounted one of the four Days.* *ibid.* Note (d).

4. *When Pleas in Abatement, Tender or uncore prift are to be pleaded.* East. 5 Ann. (a). Trin. 5 & 6 Geo. II. (b).

5. *In what Cases the Defendant must plead in four Days, and when in eight Days.* Trin. 5 & 6 Geo. II. Mich. 10 Geo. II. reg. 2. Trin. 1 Geo. II.

6. *In what Time Defendant must plead where no Affidavit is made of the Debt, and the Declaration delivered with Notice to plead.* Mich. 10 Geo. II. reg. 2.

7. *In what Time Defendant must plead where the Cause of Action is specially set forth in the Writ.* Hill. 2 Geo. II. reg. 1.

8. *What Notice to plead where four Terms are lapsed.* Trin. 5 & 6 Geo. II. (b).

9. *What Time an Attorney or Person sued by him has to plead.* Mich. 5 Ann. reg. 3. (a).

10. *What Time Defendant has to plead on Removal by Habeas Corpus.* Hill. 2 Jac. II. Note (f).

11. *In what Time Defendants in Custody must plead.* See *Prisoners* 9, 10, 11.

12. *If any Deed be set forth with a Profert in Cur', Defendant may demand Oyer and a Copy before he pleads.* Trin. 5 & 6 Geo. II. (b).

13. *In what Time to plead after Oyer.* *ibid.*

14. *In Suits by Original, Defendant need not plead till Oyer of the Original.* Trin. 5 & 6 Geo. II. (d).

15. *In what Time after Amendment of the Declaration.* *ibid.* & Mich. 10 Geo. II. reg. 2. (d).

16. *On Amendment Defendant may plead de novo.* *ibid.*

17. *In what Cases Defendant may vary his Plea.* Trin. 5 & 6 Geo. II. (b).

18. *When Defendant must plead without Demand of a Plea.* Mich. 10 Geo. II. reg. 2. (d). Trin. 5 & 6 Geo. II. (b).

19. *If Rule before in the same Term, no new Rule to plead.* *ibid.*

20. *No need of Affidavit to plead several Pleas.* Trin. 5 & 6 Geo. II. (b).

21. *The General Issue cannot be waived, a Special Plea on Demurrer may.* *ibid.*

22. *If a Judgment be pleaded, the Term and Number of the Roll to be given, if required.* *ibid.*

23. *In Case of a dilatory Plea or frivolous Demurrer, the Court will order Defendant to stand by it, or plead instantly, or on the Morrow.* *ibid.*

24. *Defendant when bound to plead an issuable Plea, yet may demur to the Replication.* *ibid.*

25. *The common Bar and new Assignment to be forborn in Pleadings, where the Certainty is contained in the Declaration.* Mich. 1654. sec. 16.

26. *Unnecessary Repetitions to be avoided in Pleadings.* *ibid.*

27. *In pleading an Outlawry the mean Process not to be repeated.* *ibid.*

28. *In pleading a general Statute, the Statute not to be recited.* *ibid.*

29. *General Pleas to be delivered to the Plaintiff's Attorney, or entered in the general Issue Book.* Trin. 5 & 6 Geo. II. (b).

### Pleadings (Special).

30. — are to be left with the Clerks of the Papers, who are to make and sign Copies. Trin. 1 Jac. I. Trin. 16 Car. II. Mich. 2 W. & M.

31. *Special Pleas are to be signed by Counsel.* East. 18 Car. II.

## The TABLE to the Rules and Orders in B. R.

32. Pleas to be entered in the Office three Days after the End of every Term. *Trin. 14 Car. II. reg. 2.*
33. In what Cases Attorneys may make up Issues. *see Paper Book. 1.*

### Poffeas.

1. Attorneys to take Care that *Poffeas* be marked by the Clerk of the *Poffeas* two Days after Receipt thereof, and before Costs are taxed. *Trin. 2 Jac. I. reg. 2.*
2. The Clerks of Assize to appear with their *Poffeas* the first Day of *Easter* and *Michaelmas* Term. *Mich. 1654. sec. 1.*
3. Formerly *Poffeas* were to be delivered out of Court only to Prothonotaries Clerks and Filazers *Hill. 1657.* but now are usually delivered to Attorneys.

### Prisoners.

1. No Bailiff to take from any Prisoner in his Custody a Warrant to acknowledge Judgment, unless in the Presence of an Attorney. *Easter 15 Car. II.*
2. The ancient Practice in relation to proceeding against or discharging Prisoners. *Easter 5 W. & M. reg. 3. Note (a). Easter 16 Car. II. Mich. 1654. sec. 11.*
3. Rules for delivering Declaration to Prisoners in Gaol. *Easter 5 W. & M. reg. 2, 3.*
4. The Statute 4 & 5 W. & M. for delivering Declarations against Prisoners in Gaol. *Easter 5 W. & M. reg. 3. Note (a).*
5. Prisoners on criminal Account not to be charged with Civil Actions. *Trin. 2 Geo. I. Note (c).*
6. — to be alledged in the Declaration in whose Custody the Prisoner is. *Easter 5 W. & M. reg. 3. (a).*
7. — Bill to be filed before a Copy delivered. *ibid. (b).*
8. — not to be delivered before the Return of the Process. *Easter 5 W. & M. reg. 2, 3.*
9. Attachment against Gaoler concealing Declaration. *ibid.*
10. No Rule to appear and plead till Affidavit made and filed of the Delivery of the Declaration. *ibid.*
11. In what Time Prisoner must plead if in Custody of a Gaoler. *ibid.*
12. In what Time a Prisoner in Custody of the Marshal is to plead. *ibid. reg. 3. (c).*
13. Copy of the Affidavit to be produced before the signing of Judgment. *ibid.*
14. Affidavit of delivering Copy of Declaration not necessary when the Defendant is in the Custody of the Marshal. *ibid. reg. 3. (c).*
15. Prisoners how charged in Execution. *Trin. 2 Geo. I. Note (c).*
16. How to proceed against a Prisoner charged with a Declaration in the Custody of the Marshal after removing himself to the Fleet. *ibid.*
17. How in the Fleet after removing to the King's Bench. *ibid.*
18. Prisoner on mesne Process taken on Escape Warrant may be discharged unless Declaration be delivered in two Terms. *Trin. 6 Ann.*
19. Defendant after Judgment rendering in Discharge of Bail to be charged in Execution in two Terms. *Trin. 2 Geo. I. Note (c).*
20. Plaintiff not declaring in two Terms, Prisoner may be discharged on Common Bail. *Trin. 2 Geo. I. Easter 5 W. & M. reg. 2. Mich. 1654. sec. 11.*
21. The Term in which the Process is returnable to be accounted one. *Trin. 2 Geo. I. Note (d).*
22. Plaintiff not proceeding to Trial or Judgment in three Terms after Declaration, Prisoner may be discharged on Notice. *Trin. 2 Geo. I. Former Rule, Easter 16 Car. II.*

23. Prisoner may be discharged if not charged in Execution in two Terms after Judgment on Notice. *Trin. 2 Geo. II. Trin. 9 W. III.*
24. How to discharge a Prisoner out of the Custody of a Sheriff. *Trin. 2 Geo. I. Note (c).*
25. — How out of the Custody of the Marshal. *ibid.*
26. Prisoners removed from the Fleet to the King's Bench to remain there till the Fees of the Fleet are paid. *Hill. 14 Car. I.*
27. Prisoners committed on Habeas Corpus to the Custody of the Marshal to remain two Days notwithstanding any other Habeas Corpus. *Hill. 5 W. & M.*
28. Rules for the better Government of the King's Bench Prison. *Mich. 3 Geo. II.*
29. The Marshal to suffer none in his Custody or within the Rules to go out thereof. *Mich. 28 Car. II.*
30. What Fees ought to be paid by Prisoners in the King's Bench Prison. *17 Dec. 4 Geo. II.*

### Privilege.

See Attorneys 23.

### Procedendo.

1. A Procedendo unless Bail on Removal by Habeas Corpus in four Days after Notice in Term, and six in Vacation. *Hil. 10 W. III. (c) Mich. 16 Car. II. Note (a).*
2. After Exception, a Rule for a Procedendo, in four Days unless better Bail, whether in Term or Vacation. *ib.*

### Proviso.

See Trial.

1. When Trials by Proviso may be had. *Mich. 4 Ann. (c).*
2. What Notice of such Trial to be given. *ibid.*
3. Both Plaintiff and Defendant may carry down the Record. *ibid.*
4. Costs for not going on to Trial by Proviso. *ibid.*

### Records of Nisi prius.

1. Records of *Nisi prius* in London and Middlesex to be sealed on or before the Day appointed by the Chief Justice. *Easter 7 Geo. I.*
2. No Record of *Nisi prius* to be sealed before the Issue or an *Incipitur* be entered on the Roll, and both brought to the Secondary to be signed. *Mich. 5 Ann. reg. 1. Trin. 1 Jac. II. Easter 1657. Hill. 1649.*
3. The Manner of ingrossing the Record of *Nisi prius*. *Mich. 5 Ann. (a).*
4. When Records of *Nisi prius* for Trial at the Assizes are to be sealed. *Trin. 31 Car. II. Former Rule, Trin. 15 Car. II. reg. 2.*
5. The Attorneys of this Court who attend at the Assizes, to pay no more than the Attorneys of the Common Pleas for putting in the Record. *Easter 13 Jac. I.*
6. In Causes to be tried in the Circuits, the Writ and Record to be entered together. *Trin. 10 & 11 Geo. II.*

### Replications, Rejoinders, &c.

See Paper Books.

1. What Time to reply on Rule given by Secondary. *Trin. 1 Geo. II. Note (d).*

## The TABLE to the Rules and Orders in B. R.

2. *A Term's Notice to reply if no Proceedings in four Terms.* Trin. 5 & 6 Geo. II. Note (b).
3. *What Time to reply after Oyer of a Deed mentioned in the Plea.* *ibid.*

### Rolls.

1. No number'd Rolls to be delivered to any but the Clerks of the Chief Clerk. *Mich. 5 Ann. Mich. 1654. sec. 14. Trin. 1 Jac. II.*
2. *They are now delivered to Attorneys as well as the Clerks.* *Mich. 5 Ann. (c).*
3. No Rolls to be carried into the Country. *Mich. 1654. sec. 14.*
4. *No Rolls to be received or allowed for by the Clerk of the Treasury, unless marked by the Person appointed by the Chief Justice to deliver out the Rolls.* Trin. 1738.
5. The Rolls of Trinity, Michaelmas and Hillary Terms to be brought in before the Effoin-Day of every subsequent Term, and the Rolls of Easter before the first Day of Trinity Term. *Mich. 5 Ann. reg. 1. Trin. 10. Mich. 9. and Easter 9 W. III. Easter 5 W. & M. Easter 1657.*
6. The Issue or an Incipitur to be entered on the Roll before the Record of *Nisi prius* is sealed or passed. *Mich. 5 Ann. Former Rules, Easter 1657. Hill. 1649.*
7. Every Judgment or an Incipitur to be entered on the Roll before Judgment is signed. *Mich. 5 Ann.*
8. By whom and in what Manner Entries are to be made on the Rolls. *Hill. 1657.*
9. Warrants of Attorney to be entered on the Roll at the Beginning of the Cause, otherwise the Roll not to be received or filed. *Easter 4 Jac. II.*
10. No Plea Roll to be filed after the Term following that of which it ought to be filed of. *East. 9 W. III.*
11. The Clerk of the Treasury to appoint one to attend, that Access may be had to the Rolls. *Trin. 1656. reg. 2.*

### Rules.

1. After a Motion and Rule therein made in Presence of Counsel, the Court is not to be again moved, contrary to that Rule. *Hill. 2 Jac. I.*
2. Rules made after the third Day after any Term void. *Trin. 14 Car. II. reg. 2.*
3. Summons's to attend, Orders made, or other Matters transacted by a Judge at his Chambers during the Sitting of the Court, void. *Mich. 11 Geo. I.*

### Scire Facias.

1. **T**HERE ought to be fifteen Days between the *Teste* and Return of every Sci' Fa' by Original. *Easter 5 Geo. II. reg. 3. (c). Trin. 8 W. III. reg. 1. (c).*
2. — if by Bill, fifteen Days between the *Teste* of the first and Return of the last Sci' Fa'. *ibid.*
3. The Alias Scire facias to bear *Teste* the Return of the first, and not to issue till the first be returnable. *Trin. 8 W. III. reg. 1.*
4. If one only issue, no Time limited between the *Teste* and Return. *Easter 5 Geo. II. reg. 3. (c).*
5. Every Sci' Fa' on which a Scire feci is returned to be left four Days exclusive in the Sheriff's Office before the Return. *Easter 5 Geo. II. reg. 3.*
6. Every first Sci' Fa' on which a *Nihil* is returned to be left sometime in the Sheriff's Office before the Return. *ibid.*

7. Every Alias Sci' Fa' to be left four Days in the Office before the Return. *ibid.*
8. The Time when every Sci' Fa' is left in the Office to be indorsed by the Sheriff. *ibid.*
9. Where Judgment must be reviewed by Sci' Fa' if no Execution within a Year. *ibid. Note (c).*
10. In what County the Sci' Fa' to review a Judgment must be sued. *ibid.*
11. — when to be made returnable on a Day certain, when on the Effoin-Day. *ibid.*
12. If either Party die before Execution, a Sci' Fa' to issue. *ibid.*
13. In what County the Sci' Fa' against Bail is to issue. *ibid.*
14. What Entries are to be made on the Roll before the Sci' Fa' is made out against Bail. *ibid.*
15. Sci' Fa' will not lie against Bail till a Ca' Sa' be returned against the Principal. *ibid.*
16. — when to be entered on the Rolls. *ibid.*
17. How two Scire Facias's of different Terms are to be entered. *ibid.*

### Seal Office.

See Writs 14 to 17.

### Sheriffs.

1. — to cause sufficient Summons to be given to Jurymen. *Easter 1651.*
2. — not to suffer Prisoners brought up by *Habeas Corpus* to wander. *Mich. 1654. sec. 7.*
3. — to return all Writs before or immediately after the End of every Term. *Easter 6 Jac. I.*
4. — to return Writs or bring in the Body in six Days after Service of a peremptory Rule for that Purpose, or liable to Attachment. *Mich. 6 Geo. II.*
5. — to indorse on every Sci' Fa' the Day it is left in their Office. *Easter 5 Geo. II. reg. 3.*
6. — To indorse the Attorney's Name on Warrants. *Trin. 1 Geo. II. Note (b).*
7. — not to make out any Warrants before the Writ be delivered, nor deliver out blank Warrants. *Mich. 1694. sec. 2. 15 Car. II. reg. 4.*
8. Sheriffs and Under Sheriffs not to delay the Execution of Process or Return of Writs, or take undue Fees, or detain Money. *Mich. 1654. sec. 2.*
9. Every Sheriff to have his Deputy in Court. *Mich. 1654. Easter 15 Car. II. reg. 4.*
10. — such Deputy personally to appear before the Effoin Day of the second Return of every Term. *Mich. 1654. sec. 1. Easter 23 Car. I.*
11. — to attend daily in Court in Term Time. *Easter 15 Car. II. reg. 4. Hill. 21 Car. I.*
12. The Sheriff of Chester to return Writs directed to him. *Trin. 21 Car. I.*
13. The Sheriffs of Wales to execute Judicial Writs. *Hill. 19 Jac. I.*

### Sittings.

1. Causes to be entered in the Judge's Book two Days before the Sitting, or a *Ne recipiatur* may be entered. *Hill. 15 & 16 Car. II.*
2. At the Sittings after Term no *Ne recipiatur* till after Proclamation. *Mich. 4 Ann. (a).*
3. Plaintiff hindered of a Trial by *Ne recipiatur* may try the Cause at the next Sitting on Notice. *Mich. 4 Ann.*
4. As he may if not ready at the Day for which Notice was given. *ibid. (c).*
5. If not tried at the next Sitting, Notice to be given as at first, unless made a *Remanet*. *ibid.*

## The TABLE to the Rules and Orders in B. R.

### Solicitors.

1. Common Solicitors not to practise unless admitted Attorneys. *Mich. 1654. sec. 1.*
2. —but not to extend to the managing of Evidence or Servants in the Causes of their Masters. *ibid.*

### Summons.

See Rules 3.

### Sundays and Holidays on which the Court doth sit.

1. —when accounted one of the four or six Days to put in Bail. *Mich. 8 Ann. reg. 1. (e).*
2. —when accounted one of the four or eight Days to plead. *Trin. 1 Geo. II. (d)*
3. —or to plead in Abatement. *Easter 5 Ann (a).*
4. —when one of the eight or fourteen Days in Notices of Trial. *Mich. 4. Ann. (c).*
5. —when one of the four Days to move for a new Trial, or in Arrest of Judgment. *Easter 5 Geo. II. reg. 3. (c).*

### Tipstaff.

—his Fees on Commitments. — 4 Geo. II.

### Trial.

1. Due Notice of Trial to be given in all Causes. *Mich. 1651.*
2. When eight Days Notice of Trial is sufficient. *Mich. 4 Ann. Note (c).*
3. When a Term's Notice must be given. *ibid.*
4. — Sunday one of the Days. *ibid.*
5. Notices and Countermands to be in Writing. *ibid.*
6. Notice of Trial on Special Issue to serve for General Issue if the Special Issue be waived. *Hill. 8 Geo. I. Note (a).*
7. Where two Days Notice of Countermand is sufficient. *Mich. 4 Ann. (c).*
8. Unless Causes be entered with the Chief Justice two Days before the Sitting, a *Ne recipiatur* may be entered. *Hill. 15 & 16 Car. II. reg. 2.*
9. Plaintiff hindered of a Trial by a *Ne recipiatur* may try the Cause at the next Sitting on Notice. *Mich. 4 Ann.*
10. When *Ne recipiatur* may be entered at the Sitting after Term. *Mich. 4 Ann. Note (a).*
11. Issues joined of a former Term are to be tried the first or second Sitting of every Term. *Hill. 20 & 21 Car. II. Former Rule, Hill. 15 & 16 Car. II.*
12. On Trials at Bar the Secondary to name forty-eight Jurors, and the Attorneys of each Side to strike out twelve. *Trin. 8 W. III. reg. 2.*
13. The Party applying for a Special Jury to be at the Expence. *ibid. the Note (d).*
14. The Day of Trial at Bar to be appointed by the Court, but Plaintiff may countermand. *Mich. 4 Ann. Note (c).*
15. No Trial at Bar in an *issuable* Term. *Mich. 4 Ann. Note (d).*
16. On Trials at Bar each Juror lying out one Night after a Privy Verdict to be allowed only 3 s. 4 d. for Diet besides the Charges of his Lodging. *Mich. 1654. sec. 21.*

17. Trial not to be staid on not paying Costs for not going to Trial on former Notice, except Ejectment. *Mich. 4 Ann. Note (c).*

18. In Causes to be tried in the Circuits, the Writ and Record to be entered together. *Trin. 10 & 11 Geo. II.*

19. If the Plaintiff give Notice of Trial and proceed not, he shall not take it down to Trial without new Notice. *Mich. 1654. sec. 18.*

20. If the Plaintiff do not countermand in Time, the Defendant shall have Costs. *ibid.*

21. When Trials by Proviso may be had. *Mich. 4 Ann. Note (c).*

22. Notice of such Trial to be given, and Costs for not going on to Trial. *ibid. (c).*

23. Both Plaintiff and Defendant may carry down the Record. *ibid. (c).*

24. A new Trial may be had where a Verdict finds entire Damages, and Part not actionable though Judgment be arrested. *Mich. 1654. sec. 21.*

### Venue.

1. ACTIONS upon the Case, Trespas for Goods, Assault or Imprisonment to be laid in their proper Counties. *Mich. 1654. sec. 5.*
2. —except they arise where the Justices seldom come. *ibid.*
3. In what transitory Actions the Venue may be changed. *Mich. 10 Geo. II. reg. 2. Note (e).*
4. Before Plea the Venue may be changed on Oath. *Mich. 1654. sec. 5.*
5. — may be changed, though the Defendant come in by Exigent. *ibid.*
6. Where the Evidence arises in two Counties, the Plaintiff may lay the Venue in which he will. *Mich. 10 Geo. II. reg. 2. Note (e).*
7. Where the Plaintiff shall not alter his Venue. *ibid.*
8. The Privilege of Barristers, Attorneys and Officers, as to laying and altering the Venue. *ibid.*
9. On Causes removed out of Cities or Towns where Justices of *Nisi prius* seldom come, if the Action be transitory, the Venue must be laid in that County wherein the City or Town lies. *Mich. 1654. sec. 9.*

### Verdicts.

1. In Special Verdicts the unnecessary finding of Deeds in *hæc verba* to be forborn. *Mich. 1654. sec. 20.*
2. —where the Points are single, and no Special Conclusion, the Counsel to subscribe the Points in Question and agree to amend Mistakes. *ibid.*
3. When Books are to be delivered to the Judges on arguing Special Verdicts. *Easter 2 Jac. II.*

### Under-Sheriffs.

1. Under-Sheriffs delaying the Execution or Return of Writs, taking undue Fees, or detaining Money, liable to Attachment. *Mich. 1654. sec. 2.*
2. — on Service of a peremptory Rule to make Return in six Days, or liable to Attachment. *Mich. 6 Geo. II.*
3. —not to practise as an Attorney. *Mich. 1654. sec. 1.*
4. Deputy Sheriffs to appear in Court by the Effoin Day of the second Return of every Term. *Mich. 1654. sec. 1.*

[ 1 ]

Walters

## The TABLE to the Rules and Orders in *B. R.*

### *Wales.*

See *Sheriffs* 13.

### *Warrants.*

1. **N**O Blank Warrants to be delivered by Sheriffs, nor Warrants granted before the Writ is received. *Easter* 15 *Car. II.* *Mich.* 1654. *sec. 2.*
2. *Sheriffs to indorse the Attorney's Name on Warrants.* *Trin.* 1 *Geo. II.* Note (b).

### *Warrants of Attorney.*

1. The Defendant's Attorney at the Time of his appearing to give the Plaintiff's Attorney the Warrant of Attorney, and pay 4 *d.* for the same at the Delivery of the Declaration, *aliter* Judgment. *Mich.* 5 *Ann. reg. 2.*
2. ——— may be filed at any Time before Defendant has pleaded. *ibid.* Note (c).
3. Warrants of Attorney to be entered on the Judgment Roll. *Easter*, 4 *Jac. II.*
4. A Warrant of Attorney to confess Judgment by a Person in Custody not binding, unless his Attorney be present. *Easter*, 15 *Car. II. reg. 2.*

### *Writs.*

1. *Latitats* and all other signable Writs to be duly signed before sealing. *Trin.* 1656. *Easter* 15 *Car. II. reg. 1.* *Easter* 1659.
2. All Writs and Procefs upon Originals before Defendant's Appearance to be signed by the Filazer. *Easter* 31 *Car. II.*

3. ——— and Writs by Original to be signed by him before Sealing. *Hill.* 31 *Car. II.*

4. What Fines are to be paid on original Writs. *Hill.* 6 *W. & M.*

5. *The Day and Year of signing Procefs to be set down thereon.* *Trin.* 1 *Geo. II.* Note (b).

6. *The Name of the Attorney to be wrote on every Writ, and Procefs.* *Trin.* 1 *Geo. 2.* Note (b).

7. On signing every new *Alias*, *Pluries* and not *Omitas*, a Note of the Term when the *Latitat* issued to be subscribed. *Trin.* 1656.

8. Sheriffs to return all Writs immediately after the End of every Term. *Easter* 6 *Jac. I.*

9. Sheriffs on Service with a Rule, to return Writs in six Days. *Mich.* 6 *Geo. II.*

10. All judicial Writs to be executed by the Sheriffs of *Wales*, as in *English* Counties. *Hill.* 19 *Jac. I.*

11. The Sheriff of *Chester* to return all Writs directed to him, on Penalty of 50 *l.* *Trin.* 21 *Car. II.*

12. Concerning Writs wherein the Cause of Action is specially set forth and expressed. *Hill.* 2 *Geo. II.*

13. *No Special Writ where the Cause of Action is under* 10 *l.* *ibid.* Note (b).

14. That one or more Persons may attend the Seal on Behalf of the King, and stamp the Writs. *Hill.* 25 *Car.*

15. — the like Rule on the Behalf of the Earl of *Suffolk.* *Easter* 32 *Car. II.*

16. The Officers of the Seal may inspect Writs in the Custody of Under-Sheriffs, to see they are duly sealed. *Trin.* 4 *W. & M. reg. 3.* Former Rule, *Trin.* 1656.

17. The Keeper of the Seal to allow every Clerk the Sealing of one Writ *gratis* every Term. *Mich.* 13 *Car. II.*

F I N I S.

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1. The first part of the document is a list of the names of the persons who were present at the meeting.

2. The second part of the document is a list of the names of the persons who were absent from the meeting.

3. The third part of the document is a list of the names of the persons who were present at the meeting.

4. The fourth part of the document is a list of the names of the persons who were present at the meeting.

5. The fifth part of the document is a list of the names of the persons who were present at the meeting.





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